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STATE OF CALIFORNIA



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WEDNESDAY, JUNE 5, 2002
1:32 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, JUNE 5, 2002

16 1:32 P.M.

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25 Reported by:

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27 Evelyn J. Mizak
28 Shorthand Reporter

STATE OF CALIFORNIA

DEPARTMENT OF REVENUE

1910

STATE OF CALIFORNIA

1910

DEPARTMENT OF REVENUE

1910

1910

APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

THOMAS L. CAREY, Warden
California State Prison, Solano

ROY MABRY, State President
Association of Black Correctional Workers

RICHARD TATUM, State President
California Correctional Supervisors Organization

SUZANNA AGUILERA-MARRERO, State President
Chicano Correctional Workers Association

JOSE A. MONTALBAN
California Correctional Supervisors Organization

RICHARD BLAIR, Chapter President
CCPOA, Solano

1 RICHARD SANDERS, Steward
2 CSEA at CSP Solano, Education

3 JOYCE THOMAS-VILLARONGA, Chapter President
4 CSEA, Solano; SEIU Local 1000

5 V. MARI GOODMAN, DLC 707 President
6 CSEA, SEIU Local 1000

7 TERRY DICKINSON, Acting Associate Warden
8 CSP Solano

9 ROBERT LONG III, Correctional Counselor
10 Department of Corrections

11 ROBERTA STANWICK, Member
12 CSEA Local 1000

13 JERRY ENNIS, Member
14 CSEA, California Correctional Institution

15 DAVID TRISTAN, Chief Deputy Director
16 Field Operations, Department of Corrections

17 SILVIA H. GARCIA, Warden
18 California State Prison, Calipatria

19 LEE POLK, Employee
20 Pelican Bay State Prison

21 ANTOINETTE M. TUTT, Associate Warden
22 Ironwood State Prison

23 B. CAYENNE BIRD, Director
24 UNION

25 JOHN MITCHELL, Member
26 Calipatria State Prison Employees Association

27 NORMA SIERRA GALINDO, Member
28 Citizens' Advisory Committee, Calipatria

THELMA SWETICH, Public Information Officer
Calipatria State Prison

JORGE SANTANA, Chapter President
CCWA Calipatria

1 OCTAVIO PERAZA, Community Resources Manager
2 Calipatria State Prison

3 RAYMOND A. DIN, Southern Vice President
4 Chicano Correctional Workers Association

5 CHARLES L. COTTIER, Retired
6 California Department of Corrections

7 WILLIAM R. BRADEN, Retired Correctional Lieutenant
8 Deuel Vocational Institution

9 TIM BOREM, Chapter President
10 CCSO, Calipatria

11 MICHAEL MALDONADO, Correctional Lieutenant
12 Centinela State Prison

13 GEORGE J. GIURBINO, Warden
14 California State Prison, Centinella

15 BARBARA POWERS
16 CSEA - CIC

17 JOHN A. GARCIA, Chapter President
18 CCSO, Centinela

19 MICHAEL E. KNOWLES, Warden
20 Mule Creek State Prison, Ione

21 SANDI CAMPBELL, Chapter President
22 Mule Creek State Prison, CCPOA

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: What we are going to do is get rid of the wardens so we can empty out the room.

Thomas L. Carey.

Those that are here on the Governor's Reorganization thing can probably go out and get a cup of coffee for 15 minutes at least and not miss anything, or stand around in a crowded room.

SENATOR JOHNSON: In violation of all the fire laws.

CHAIRMAN BURTON: Exactly.

Go ahead, Sir.

MR. CAREY: Senator Burton and Rules Committee Members, it is an honor to appear before you. I am Tom Carey, Warden at the California State Prison, Solano.

Prior to serving at Solano, I was the Warden for three-and-a-half years at the California Institution, Tehachapi.

I want to acknowledge the professional staff that work at these two institutions and thank them for their good work in support of me as their Warden.

My CDC experience also includes assignments at San Quentin, Mule Creek State Prison, and the California Training Facility at Soledad. I have also served on an interim basis as the Chief of Training for the Department.

I earned a Bachelor of Arts Degree from California State University in Fullerton and a Masters Degree in Education from Whittier College.

1 My work experience, my educational background,
2 provide a solid foundation for me to continue to serve as the
3 Warden at the California State Prison in Solano.

4 At this time I will conclude my opening remarks
5 and respond to your questions.

6 CHAIRMAN BURTON: Do you have any family you'd
7 like to introduce?

8 MR. CAREY: Yes. I'd like to introduce my wife,
9 Tamsin; my daughter Amy; and my daughter-in-law Brandy.

10 Thank you.

11 CHAIRMAN BURTON: Questions, Senator Johnson.

12 SENATOR JOHNSON: No questions.

13 CHAIRMAN BURTON: Senator Karnette.

14 SENATOR KARNETTE: I don't have any questions.

15 CHAIRMAN BURTON: Senator Knight.

16 SENATOR KNIGHT: Thank you.

17 How come you left Tehachapi?

18 MR. CAREY: I left Tehachapi for a couple of
19 reasons. First, Solano has a very large academic program, and I
20 have a Master's Degree in Education, and I'm very interested in
21 education in the prison system.

22 Secondly, for my five children and my grandbabies
23 live in the Sacramento area.

24 SENATOR KNIGHT: Okay.

25 CHAIRMAN BURTON: What you have done, or what
26 actions have been taken on the custody side concerning the
27 improvement of dental care for the inmates?

28 MR. CAREY: For inmates?

1 CHAIRMAN BURTON: Dental care for inmates.

2 MR. CAREY: For the inmates.

3 CHAIRMAN BURTON: Yes.

4 MR. CAREY: Yes, sir.

5 When I arrived at Solano, the inmates had been in
6 the a lockdown situation for a long period of time. One of my
7 immediate goals was to get the prison into an unlocked
8 situation. We started having bi-weekly unlocked meetings
9 instead of lockdown --

10 CHAIRMAN BURTON: We're talking about dental care
11 right now for the inmates.

12 MR. CAREY: I'm sorry.

13 For dental care, yes, sir. For dental care, the
14 first thing we did was, we hired all the staff necessary,
15 including the dental assistants. So, we now have in place a
16 full staff at Solano to provide dental care.

17 The second thing we did was to take an assessment
18 of the actual work area where the care is provided. We
19 determined that that area was inadequate. We identified another
20 supplemental area. We have approved and purchased two
21 additional dental chairs, and they're not installed yet. We're
22 going through the competitive process. By June 14th, we should
23 have our bids in to install two additional chairs.

24 The other thing that we've done on -- completed
25 now is, all dental duckets are on a priority basis, so that the
26 inmates can come to dental services on priority basis.
27 That's -- when you take the comparison of what we were doing in
28 February, March, there were about 79 inmates getting ducketed

1 over. The last week of May, we had 168. So, there's been a
2 marked improvement in the access to dental care.

3 As I indicated, it's because of the staff. It's
4 because of looking at the operations, and installing the
5 priority ducket system.

6 CHAIRMAN BURTON: We received a letter from the
7 Acting Warden down there. Are you familiar with the letter?

8 MR. CAREY: Yes, sir.

9 CHAIRMAN BURTON: With the allegations regarding
10 the management failure to address possible escape routes, abuse
11 of authority, lack of response, and then you talked about the
12 medical issues.

13 Can you kind of respond to that?

14 MR. CAREY: Yes.

15 On the drains, it's been the policy and practice
16 at Solano since 1995 that those drains are to be inspected, and
17 that has been ongoing, where we have the security unit at our
18 institution that does that.

19 In early October -- excuse me, early November,
20 Odette Crawford at that time, when she was the AW Central
21 Services, she brought the issue of the drains to us. We had
22 them all rechecked, and we continue to have them checked as they
23 have been doing since 1995.

24 The process since I've been there, we have found
25 some of the wells over the time have softened, and they have
26 been re-secured.

27 CHAIRMAN BURTON: Are you familiar with the
28 concerns expressed by the California State Employees Association

1 concerning, I guess, the relationship with you, and how they
2 feel you deal with them in the collective bargaining process?

3 MR. CAREY: Yes, I am.

4 CHAIRMAN BURTON: Would you please respond to
5 that?

6 MR. CAREY: Yes.

7 My management practice is to meet openly with the
8 bargaining units. I have met openly with CSEA. We have a
9 monthly meeting where we meet together with CSEA and their job
10 stewards. We have continued those meetings. They provide the
11 agenda, and we have gone down the agenda items, and we have
12 addressed their concerns in that forum.

13 We have minutes documenting each of those
14 meetings.

15 CHAIRMAN BURTON: Witnesses in support.

16 We have several letters of support that were
17 entered into the record.

18 MR. MABRY: Chairman Burton and Committee
19 Members, Ms. Sabelhaus, the Rules Secretary, my name is Roy
20 Mabry. I'm the State President, Association of Black
21 Correctional Workers.

22 I'm here today to show complete support for Tom
23 Carey. This is my second round of testifying on behalf of
24 Mr. Carey to be confirmed as the Warden.

25 The work for complaints or support is always done
26 prior to a hearing in the way the system is set up. I'd like to
27 show that same support for the other three wardens, Mr. Knowles,
28 Giurbino and Silvia Garcia.

1 I make that comment about the work being done
2 before because, you know, we got a system that we go through
3 before we submit people. They go through our management teams
4 out of Headquarters, and then we get the information here
5 through the Legislators to address whatever the concerns are.

6 I normally would just make one comment, and if we
7 got a group of wardens coming up, as opposed to asking them to
8 come back later on to make additional comments. But if
9 necessary, because of some of the things you possibly experience
10 during comments today, I'll come back and speak again later.

11 If not, I'd like to make the support known for
12 all of the wardens that's coming up now, specifically for a
13 person I worked very close with during her initial appointment
14 as warden and some of the things that she experienced. And she
15 sort of worked herself through, and just give it 130 percent
16 support, and that's Warden Garcia. And I'm really just looking
17 forward to giving her a big hug after all this is over with.

18 Thank you.

19 CHAIRMAN BURTON: Other witnesses in support.

20 MR. TATUM: I'm Richard Tatum. I'm the State
21 President of the California Correctional Supervisors
22 Organization.

23 Our organization does not take these
24 confirmations lightly. We have worked with Mr. Carey at
25 Tehachapi when he was there with it. Worked with him while he's
26 been at Solano.

27 He works real well with our supervisors and
28 listens to what they have to say. He meets with them on a

1 regular basis, and our organization is in full support of
2 Mr. Carey.

3 CHAIRMAN BURTON: Other witnesses.

4 MS. AGUILERA-MARRERO: Good afternoon,
5 distinguished panel. My name again is Suzanna Aguilera-Marrero,
6 Sam for short, with the Chicano Correctional Workers
7 Association.

8 I'm here today to express the support of the
9 Chicano Correctional Workers Association for Mr. Tom Carey.
10 This also is our second time coming up before you in his
11 support, and we will continue to support him because he
12 continues to have an open door, and he listens to everyone that
13 has some input in all issues involved. Even though he doesn't
14 always do what we want or what they want, he does do his best to
15 be professional and to be fair in making the decisions that are
16 going to be in the best interest of the institution for the
17 safety and security of our communities.

18 Thank you.

19 CHAIRMAN BURTON: Thank you.

20 Other witnesses.

21 MR. MONTALBAN: I'm Correctional Sergeant
22 Montalban. I work at CSP Solano, and I'm the Chapter President
23 of CCSO. And we, the Chapter and the members, support Tom Carey
24 because he's very fair with all supervisors at our institution.

25 CHAIRMAN BURTON: Thank you.

26 Other witnesses in support.

27 Witnesses in opposition. Support?

28 MR. BLAIR: Good afternoon. My name is Richard

1 Blair. I am Chapter President at Solano.

2 CHAIRMAN BURTON: Chapter President of what?

3 MR. BLAIR: Solano, CCPOA, Chapter President,
4 Solano.

5 CHAIRMAN BURTON: Does your contract give you
6 guys comp time when you come up here like this?

7 MR. BLAIR: No, sir. We used our own time.

8 CHAIRMAN BURTON: How did you miss that one in
9 that contract.

10 [Laughter.]

11 MR. BLAIR: I knew this was going to come up. I
12 think my Chief Job Steward and Vice President used sick time,
13 but I did not, sir.

14 [Laughter.]

15 CHAIRMAN BURTON: Go ahead.

16 MR. BLAIR: I'd just like to say that the Chapter
17 met some three weeks ago, and the board met, and we'd like to
18 tell you that we unanimously confirmed Mr. Carey as up for
19 confirmation, and we fully support him.

20 We have a very open line of communication with
21 the Warden now, and we've had in the past, but this is a little
22 bit better. And like some people, say we don't get everything
23 we want, but we're talking about it.

24 So, we're here to support Mr. Carey to the
25 fullest. Thank you.

26 CHAIRMAN BURTON: Other witnesses in support.
27 Witnesses in opposition. Are you opposition or support?

28 MR. SANDERS: Support.

1 My name is Richard Sanders. I'm a teacher over
2 at CSP Solano. I've been there since 1985 as a teacher and as a
3 job steward.

4 This is exciting to be here It's my first
5 experience.

6 I have a few points in favor of Mr. Carey that I
7 would like to point out through my experience. I attend, on a
8 regular payday, meetings, the safety meetings, which the Union
9 sends representatives from each bargaining unit. I've been
10 doing this for 10-12 years already. And I find going to the
11 meetings that I am treated in my position as an equal. They
12 often listen, Mr. Carey listens, to what I have to say, and if
13 action is warranted, then he follows through with it.

14 So, I cannot say anything else, anything but
15 positive remarks about how he treats me at meetings with the
16 Safety Meeting, which is most management staff is there.
17 There's been many times in the past where I've been less treated
18 professionally.

19 I would also like to say that I think Mr. Carey,
20 and I'm really speaking for myself and my own experience, that
21 he supports education. I do not know many wardens or have seen
22 many wardens come up to what we call the hill, which is a good
23 little trek, and sit down for a two or three hour WASC Committee
24 meeting, and partake in, you know, the process, and listen to
25 our concerns for the teachers. And wants to be kept up to date
26 and will come back to the meetings for the WASC Committee. And
27 I find that very commendable that he does that.

28 Also, I find he is -- well, the fact that he has

1 a Master's Degree in Education, I think, speaks very highly of
2 him, because education and programs, when I first started in
3 Corrections, I was correctional officer at San Quentin for the
4 first year-and-a-half or two, and I can always remember being
5 asked what I thought about rehabilitation of the inmates. Well,
6 my answer back then, and I can still remember it very clear
7 today, was I believe in rehabilitation; however, there's not a
8 blanket for it, and every inmate has, you know a little
9 motivation to press. And I always felt that's very important.

10 CHAIRMAN BURTON: When were you at San Quentin?

11 MR. SANDERS: I started there in '82, and then I
12 went to Soledad as a teacher.

13 CHAIRMAN BURTON: Early '82?

14 MR. SANDERS: March of '82. And Captain Nelson
15 was my interviewer back then.

16 CHAIRMAN BURTON: Was my brother teaching there
17 then, Robert Burton?

18 MR. SANDERS: Well, I was an officer, so I didn't
19 have much to do with education.

20 CHAIRMAN BURTON: Didn't have any truck with
21 those teachers then, huh?

22 [Laughter.]

23 CHAIRMAN BURTON: He left sometime in '82.

24 MR. SANDERS: Probably if I saw him, I would.

25 Back to the education issue. I know he's come up
26 to the hill several times to talk about situations up there.
27 And every time I have ran across him, he's been friendly. He
28 takes the time out to listen to what I have to say and what

1 other teachers have to say. And he emphasizes being very
2 supportive.

3 Finally, what I would like to say is that I think
4 he takes the time with line staff, because I am going to talk,
5 you know, about support of line staff, and he will spend the
6 time, and be personable, and ask what's going on. A lot of
7 wardens we never see down the line, but he makes his presence
8 shown, and I have a very good feeling.

9 There used to be the days where I'd get up and
10 want to come to work and teach because we had good programs,
11 GED, high school diploma. And there has been days lately in the
12 last few years that going to work was just an eight-hour job.
13 But I feel that since he's been there, I'm back looking forward
14 to, you know, trying to get some of these programs up and going
15 again, and with his support, I think we can do that.

16 Thank you.

17 CHAIRMAN BURTON: Any other witnesses in support?

18 Witnesses in opposition?

19 I would ask, try not to be too repetitive.

20 Go ahead, ma'am.

21 MS. THOMAS-VILLARONGA: Thank you. My name is
22 Joyce Thomas-Villaronga. I'm actually the CSEA Chapter
23 President at Solano, but I'm also a member of the Correctional
24 Institutions Committee for CSEA.

25 The Correctional Institutions Committee for CSEA,
26 representing 13,000 employees in the Department of Corrections,
27 is requesting that you reject the confirmation of Tom Carey as
28 Warden for CSP Solano.

1 You should have received our binder regarding
2 some of our issues, explaining our reasoning for opposing his
3 confirmation.

4 We agree, he is a really nice guy, as we
5 mentioned before. However, being a nice guy should not be the
6 basis for him being confirmed.

7 In reference to the response to our binder that
8 he also gave, we had a meeting with Mr. Duncan, Deputy Director
9 of Institutions, Mr. Carey. And what I stated at that meeting
10 with Mr. Duncan and Mr. Carey was that I believe the Internal
11 Affairs process, that's part of our issues, it is statewide.
12 But we also believe the abuses of the employee investigative and
13 disciplinary process happens at the local level, and he should
14 be taking responsibility for that.

15 We have shown several instances where these
16 adverse actions and/or investigations were used in a disparate
17 manner, and are written so poorly with a lack of professional
18 quality, that they had to be thrown out.

19 What we don't understand and have addressed with
20 him is why he would allow these highly paid staff to complete
21 the quality of work they do, or allow his managers to use the
22 investigative process to intimidate and/or retaliate against
23 people with no consequences.

24 I'm an office technician with a high school
25 diploma, getting paid one-third the salary of the management
26 staff that do these investigations, yet I can do their job
27 better than they can. If I produced this type of end product, I
28 would not have a job.

1 It takes approximately \$12,000 to process an
2 investigation. This includes the lieutenant or above to
3 investigate, the time to interrogate all the witnesses, the
4 office technician to type the documents, review and typing the
5 recommendation of penalty by the employee relations officer and
6 warden. Then there's also the added expense of once a document
7 starts going through the review process by Headquarters staff to
8 approve the recommendation, serving the employee the adverse
9 action, and the appeals process. It's a wonder that they lose
10 43 percent of their cases based on technicalities. With each
11 institution having 100-plus investigations on an average per
12 year, with only about 15 recommending adverse action, it's a
13 wonder we are in a budget deficit.

14 Mr. Carey states that the grievances were
15 personal. Besides being a chapter president, I am also a
16 taxpayer, as are my constituents. We are concerned about the
17 budget deficit. We hope that overtime is used for emergent
18 needs only. Therefore, we don't understand why he would not be
19 using the most efficient, expedient, and cost-effective ways to
20 keep those costs down. Yet, since his arrival, he's allowed
21 retaliation in the assignment of overtime based on union
22 leadership, causing excess spending in overtime.

23 It seems very suspicious that in one document,
24 they state that they can use a higher classification, which is
25 much higher than office technician, to do the work of a lower
26 classification for a year based on operational need, and in the
27 next document state they cannot allow a classification that is
28 just a little bit higher to work overtime. This has been an

1 issue -- this has never been an issue before, and the only
2 classification that was excluded from the overtime happened to
3 be office technician, which is the chapter president's
4 classification.

5 As far as the issues that started before his
6 term, when they were brought to his attention, he failed to
7 address them, also leaving them to continue to be left
8 unresolved.

9 We understand and agree that we have a process to
10 address these issues. However, that process costs the taxpayers
11 money. When the warden allows and condones the continual
12 violation of employee rights, this becomes an unnecessary added
13 burden to the budget. If he or she is willing to mess with
14 employees like this, what are they willing to do to the inmates?
15 No wonder we keep having to pay several millions of dollars out
16 in lawsuits.

17 We have continually requested to be included in
18 the decision and policy making process at CSP Solano. The
19 Department's Operations Manual states that we will be included.
20 However, it appears that that was put in there to have the
21 appearance of doing the right thing with no intention of
22 enforcing it. Who better to consult with than those who do the
23 day-to-day work? They have the most knowledge and can probably
24 give you the most efficient and cost-effective way to get the
25 job done.

26 It is like the re-entry class changes that you
27 guys have asked numerous times about. No one included the
28 re-entry teachers, nor was their input --

1 SENATOR KARNETTE: Senator Burton, could I ask a
2 question?

3 CHAIRMAN BURTON: Sure.

4 SENATOR KARNETTE: You're talking about
5 grievances. Are they presented to the warden through your
6 chapter representative, your union rep? So, don't you negotiate
7 what you're going to talk to him about before you get there?

8 MS. THOMAS-VILLARONGA: We do what they call an
9 informal, and then there's a grievance process, yes.

10 SENATOR KARNETTE: Don't you handle these kind of
11 issues through that process?

12 MS. THOMAS-VILLARONGA: Well, you try to, but
13 normally they're rubber stamped. So, basically what happens is,
14 there's the expenditure.

15 SENATOR KARNETTE: As a union member myself, I
16 was in a union, there's certain processes you go through.
17 Sometime you win, and sometime you lose.

18 I'm not saying that's good or bad. I'm just
19 saying that happens.

20 So, the grievances you have, I'm sure they're
21 legitimate. I'm not saying they aren't. But if you're
22 negotiating this, and you negotiate it, then isn't it over?

23 MS. THOMAS-VILLARONGA: No, because they just
24 take the stance that they don't have to abide by it.

25 SENATOR KARNETTE: Then you just file another
26 grievance. That's what we did.

27 MS. THOMAS-VILLARONGA: Yeah, and then you keep
28 going through this process, and that's a lot of waste of

1 money.

2 SENATOR KARNETTE: But you do have a process.

3 MS. THOMAS-VILLARONGA: Correct. But my issue is.
4 the waste of money, that we don't need to be wasting based on
5 them just denying the process. It's very expensive to do
6 grievances on continual basis. If you know how much they pay in
7 labor relations, then you'd find out how expensive it is.

8 CHAIRMAN BURTON: Well, so the deal would be,
9 every time there's a grievance, they find for the grievor, and
10 that way it'll save money?

11 MS. THOMAS-VILLARONGA: No, I'm not saying that.
12 What I'm saying is that the grievances should not have to happen
13 in the levels that they do continually over and over. Same
14 grievances, 33 institutions, the same grievances.

15 And then we win them at arbitration, and then we
16 have start all over again and reinvent the wheel.

17 CHAIRMAN BURTON: So, your union contract calls
18 for arbitration. The grievance goes to arbitration. You win,
19 and then what?

20 MS. THOMAS-VILLARONGA: Then we end up having to
21 do another grievance because somebody else violates it.

22 CHAIRMAN BURTON: Another grievance about the --

23 MS. THOMAS-VILLARONGA: Yes, same issue.

24 SENATOR KARNETTE: With the same person?

25 CHAIRMAN BURTON: You mean the arbitrator finds
26 as a matter of fact that I aggrieved you, then the same --

27 MS. THOMAS-VILLARONGA: Let me put it this way.

28 In our contract, we have a sick leave

1 language, okay? What they'd like to do is use the Unit 6 sick
2 leave language on us, which we have two different contracts, but
3 because Unit 6 kind of, that's what they teach. They don't
4 teach any other contracts, so they just extend everything to us.
5 We're not in posted positions or any of that, but they like to
6 use that. So, we have to grieve that every time because it's
7 the same, in the same institution, over and over again.

8 CHAIRMAN BURTON: I understand the basic thing,
9 and we'll bring, when you're finished, somebody from Corrections
10 up.

11 I understand what you're saying now.

12 MS. THOMAS-VILLARONGA: The language is real
13 clear.

14 CHAIRMAN BURTON: There's a finding that you're
15 not Unit 6; you're Unit whatever you are, and then, all of a
16 sudden, the same thing happens again with a different employee.
17 Instead of saying it the way it should be, as the way the
18 arbitrator ruled, you're starting back over?

19 MS. THOMAS-VILLARONGA: Correct. The language
20 could be real clear, and they still violate it.

21 CHAIRMAN BURTON: I got that. Go ahead.

22 MS. THOMAS-VILLARONGA: The re-entry teachers
23 that you guys have talked about, the re-entry classes, the last
24 few weeks that the inmates are in, no one included the teachers.
25 They didn't request their input or anything when they made the
26 changes in that. What's on paper and the numbers are all that
27 seem to be important. Having an effective program that reduces
28 recidivism rates was not a factor. For each inmate kept out of

1 the system, it saves the taxpayers approximately --

2 CHAIRMAN BURTON: We understand.

3 What workers in the institution do you represent?

4 MS. THOMAS-VILLARONGA: Bargaining Unit 1, which
5 is your professional, analytical, auditors, that type of thing,
6 analysts, teachers.

7 CHAIRMAN BURTON: So, you represent the teachers.

8 MS. THOMAS-VILLARONGA: Teachers. Unit 4, which
9 is the clerical.

10 CHAIRMAN BURTON: You represent analysts; you
11 represent --

12 MS. THOMAS-VILLARONGA: Clerical.

13 CHAIRMAN BURTON: -- like clerk typists, for want
14 of a better word?

15 MS. THOMAS-VILLARONGA: Yes. I represent the
16 nurses. I represent the dental assistants, the lab people, the
17 cooks, everything --

18 CHAIRMAN BURTON: So, you represent everything
19 but the people in uniform with guns, so to speak?

20 MS. THOMAS-VILLARONGA: And the doctors.

21 CHAIRMAN BURTON: And the docs.

22 MS. THOMAS-VILLARONGA: And the operating
23 engineers. I don't do operating engineers either. The
24 maintenance people.

25 CHAIRMAN BURTON: Stationary engineers.

26 SENATOR KARNETTE: At all the institutions.

27 MS. THOMAS-VILLARONGA: At every institution,
28 yes. We have very diverse work groups.

1 When these issues have been continually brought
2 to his attention, and he's done nothing to address them locally
3 or prevent the problems, then maybe there needs to be someone in
4 that position that will do the right thing.

5 We do not have these -- we did not have these
6 issues under our previous permanent warden.

7 CHAIRMAN BURTON: You said they're institution --

8 MS. THOMAS-VILLARONGA: Statewide?

9 CHAIRMAN BURTON: -- they're statewide, so --

10 MS. THOMAS-VILLARONGA: Well, we didn't have
11 these issues. I was one of the lucky ones because I had a
12 really good permanent warden for quite a few years, Tony
13 Newland. We didn't have problems like this, that we seem to be
14 experiencing now. I went two years without an adverse action.

15 CHAIRMAN BURTON: So, there's so many prisons in
16 the state, and those prisons had the problem, but under another
17 warden, Solano didn't?

18 MS. THOMAS-VILLARONGA: Correct. I think our
19 budget was even not in trouble.

20 CHAIRMAN BURTON: Trust me, as sweet as some
21 things are, the Correction one hasn't put all the 23 billion in
22 the red.

23 MS. THOMAS-VILLARONGA: Right.

24 CHAIRMAN BURTON: Only about 19.

25 [Laughter.]

26 MS. THOMAS-VILLARONGA: Well, you know the
27 previous warden, it wasn't because we always agreed with each
28 other. It was because he did do the right thing. And we were

1 allowed to use the process when we disagreed with him without
2 any retaliation at all.

3 CHAIRMAN BURTON: Basically, your point, I think
4 I understand your point, because the other people that came up
5 are saying their relationship with the present warden is like
6 your relationship was with the past warden. Didn't always
7 agree; the door was open; you could take your shot, and a fair
8 thing.

9 So basically, the local thousand members, for the
10 want of a better word, in your judgment are not getting equal
11 treatment with the other employees.

12 MS. THOMAS-VILLARONGA: Correct. We have had a
13 lot of problems that we've never experienced except in the last
14 couple of years. We didn't have these kinds of problems at
15 all.

16 CHAIRMAN BURTON: At that institution.

17 MS. THOMAS-VILLARONGA: Yes, but I have been
18 president --

19 CHAIRMAN BURTON: But they have been at other
20 institutions.

21 MS. THOMAS-VILLARONGA: Yes, and I've been
22 president since the beginning of time, since we've had chapters,
23 at that institution. Since that institution opened, actually.

24 Our feeling is that this type of behavior that's
25 exemplified and condoned by Mr. Carey, that was what
26 necessitated us to have a dignity clause in our contract. And
27 that's really sad that we have to have a dignity clause to be
28 treated with dignity. And we're employees.

1 So in closing, we request that you not confirm
2 Tom Carey as a warden.

3 CHAIRMAN BURTON: Witnesses in opposition with a
4 a different'-- same stuff? A little bit different.

5 MS. GOODMAN: She had a lot to say.

6 CHAIRMAN BURTON: If basically the complaint is
7 the same, just let us know that you feel the complaint's the
8 same. If you have some new complaint as opposed to something
9 anecdotal, I think we get the gist.

10 MS. GOODMAN: Thank you.

11 My name is Mari Goodman. I am the DLC 707
12 President of CSEA out in Tehachapi Prison.

13 CHAIRMAN BURTON: He's not at Tehachapi. Oh, he
14 was at Tehachapi.

15 MS. GOODMAN: He was at Tehachapi, yes. He
16 worked with us a few times.

17 We are here not in support of Mr. Carey's
18 confirmation. We did have our Labor Management Meetings with
19 Mr. Carey, but Mr. Carey did monopolize the Labor Management
20 Meetings' time in there. Sometimes we were in there two to
21 three hours, listening to some very jovial --

22 SENATOR KARNETTE: If you're a union member, you
23 can interrupt him.

24 MS. GOODMAN: Pardon me?

25 SENATOR KARNETTE: I said, you say he monopolizes
26 it. I'm not saying he didn't. But you can interrupt him. It's
27 a negotiation --

28 MS. GOODMAN: And we have done that.

1 SENATOR KARNETTE: And then you can monopolize
2 it, like I'm doing right now. Really, that doesn't impress me.
3 If you're a good union member, by golly, you can do what have
4 to.

5 MS. GOODMAN: Thank you.

6 One of the problems that we have with
7 monopolizing that time, though, is that we would give him the
8 courtesy and let him have his time back to speak on whatever the
9 issues were, but we didn't get the issues that we wanted to
10 address done, taken care of. Business wasn't taken care of.
11 And then we'd have 20 minutes, and he'd have to go into a
12 meeting. So yeah, it was a problem, monopolizing the time.

13 CHAIRMAN BURTON: Again, like her, shame on you
14 for letting it happen.

15 MS. GOODMAN: And you'll interrupt me and ask me
16 a question, and certainly we'll get back to it, but you know
17 that you'll allow me to go back to the issues. He would not
18 allow that to happen because the issues still happened, and we
19 needed to take them on over to the next Labor Management
20 Meeting, which would have been a month later.

21 What he would prefer to do, probably, and I've
22 heard this from other --

23 CHAIRMAN BURTON: Now, a Labor Management Meeting
24 does what?

25 MS. GOODMAN: The Labor Management Meeting --

26 CHAIRMAN BURTON: You don't negotiate contracts
27 prison by prison; right?

28 MS. GOODMAN: Not at all. It's labor --

1 CHAIRMAN BURTON: Do your contracts allow each
2 prison to negotiate something? What do you negotiate in them,
3 unless you're bringing your beefs to them, or what?

4 MS. GOODMAN: Actually, when chain of command
5 doesn't work, we've gone through the chain of command to make a
6 correction of a particular issue that we have at the work site.
7 We bring it to his attention.

8 CHAIRMAN BURTON: It's an individual grievance,
9 or maybe even like a collective or sectional grievance.

10 MS. GOODMAN: No, there's processes for all of
11 that.

12 When we have an issue, for instance, in our labor
13 management, when there's an issue that the labor force has a
14 problem with the management force.

15 CHAIRMAN BURTON: What kinds?

16 MS. GOODMAN: Some of the issues may be the
17 supervision problems that we had. There was one particular
18 supervisor that was specifically stressing out, harassing people
19 and so forth. We allowed him the opportunity to work with that
20 supervisor.

21 CHAIRMAN BURTON: Job site.

22 MS. GOODMAN: Job site, work site issues that
23 we'd like to resolve at the very minimal level so that we
24 wouldn't have to go into these costly, long-term grievance
25 process. But it didn't allow for that.

26 What we did was bring those issues that we could
27 not resolve at the lowest level, and this is what we discussed
28 in those meetings.

1 CHAIRMAN BURTON: And got unsatisfactory --

2 MS. GOODMAN: Well, not only unsatisfactory, but
3 many times we were not able to address them because the time was
4 taken away. His time is very crucial and very limited, as our
5 time was. And that also took 15-16 stewards out of their work
6 site area for approximately two to three hours. So, that's why
7 that became an issue.

8 You know, you can be just so polite, and like I
9 said, Mr. Carey is a very jovial person. He gives some
10 wonderful stories and can really take some time to talk about
11 certain issues that he is interested in, but that Labor
12 Management is a contractual meeting that is -- belongs to CSEA;
13 should be actually chaired by CSEA, and should be actually
14 directed by the CSEA membership. They're the ones with the
15 problems.

16 In October, 2000, I had requested that Mr. Carey
17 be -- remove himself from disciplining any medical disciplinary
18 actions due the conflict of interest with his spouse.
19 Mrs. Carey was the SRN-II. How she came to that institution, I
20 really am not sure on that, because we only have an out-patient
21 housing unit; did not require an SRN-II. So, we had a concern
22 about why some of these issues he was involved in, in health
23 care.

24 And I'm going to go on to the second page and
25 make it a little bit easier.

26 My position today is based on my interactions
27 with Mr. Carey as a representative, well respected at the work
28 site. I have no personal vendetta. I've never been under any

1 investigation. I've never been retaliated.

2 Thank you.

3 CHAIRMAN BURTON: Are you describing him or you?

4 MS. GOODMAN: Thank you, then I'll move on.

5 He does not carefully think through his
6 decisions. Time after time he did interfere in the business of
7 health care services, contrary to what he stated, when he does
8 not have all the information. He oversteps his boundaries,
9 overlooking the medical specialized knowledge and expertise
10 necessary in making sound decisions for this department in
11 health care. His judgment is faulty.

12 There's disparate treatment favoring custody over
13 the health care. The MTAs that left, we had a real problem
14 there with the MTAs that left, five in one month, was due to the
15 poor the treatment and harassment allowed by Mr. Carey. He
16 allowed this to happen. They did bring this to his attention.
17 We were down 50 percent of our MTAs.

18 So, the constant interference, Mr. Burton, is the
19 real issue regarding Mr. Carey's involvement. That constant
20 interference, I think, had a motivating factor with the fact
21 that his wife was the RN, and I think he was very favorable to
22 custody.

23 And I want to just mention this, because I know
24 this is a very important thing. It's liability issues where
25 tremendous -- the inmates would undoubtedly decompensate, given
26 their condition, if he would have opened up the Hemodialysis
27 Unit, something that he pushed for three years.
28 Hospitalization -- it requires hospitalization.

1 CHAIRMAN BURTON: Repeat the dialysis thing?

2 MS. GOODMAN: Thank you. I'm glad I got your
3 attention there.

4 CHAIRMAN BURTON: You had it all the while.

5 MS. GOODMAN: That's a very important issue to me
6 because I work in medical, thank you.

7 CHAIRMAN BURTON: It keeps people alive.

8 MS. GOODMAN: Thank you.

9 He pushed the dialysis issue because it would
10 mean more nurses, which would lead to more supervising nursing
11 personnel, thereby justifying --

12 CHAIRMAN BURTON: He pushed the dialysis --

13 MS. GOODMAN: He pushed to have the dialysis unit
14 be put over at CCI Tehachapi.

15 CHAIRMAN BURTON: Were there people there in need
16 of dialysis?

17 MS. GOODMAN: There's people all over the state
18 of California, absolutely.

19 CHAIRMAN BURTON: I understand. That's like a
20 guy telling me, people die every day. It's not a good answer.

21 MS. GOODMAN: Right, but it was inappropriate to
22 have it over there.

23 CHAIRMAN BURTON: Why?

24 MS. GOODMAN: Because of the distance factor that
25 we had.

26 CHAIRMAN BURTON: That was the only one in the
27 state? They took it from a place like San Quentin and Folsom
28 and put it there? It was a new one, or what?

1 MS. GOODMAN: Yeah, it was a brand-new one. It
2 would have meant making a lot of changes --

3 CHAIRMAN BURTON: Like, he could unilaterally get
4 a dialysis thing, and the people at the Department of
5 Corrections said, "We could use it somewhere else, but you're a
6 hell of a guy. We're putting it in Tehachapi?"

7 MS. GOODMAN: No, absolutely not. As a matter of
8 fact, it was recommended not, and I'll tell you what the issue
9 was.

10 CHAIRMAN BURTON: Well, the issue to me is, I
11 have great difficulty faulting a dialysis machine almost
12 anywhere where somebody might need it.

13 The other thing would be probably to me, that if
14 it's a great distance from other places, it means those in
15 Tehachapi who needed dialysis would have to go a great distance
16 to get it.

17 So, tell me what the problem was on that
18 one.

19 MS. GOODMAN: The problem was that it was
20 inevitable that these patients would decompensate. They were
21 not going to be getting the care that would be necessary with a
22 dialysis unit. You contract in doctors; you contract in nurses.
23 But our existing nursing personnel couldn't handle that. Our
24 existing doctors could not handle that.

25 CHAIRMAN BURTON: I understand that. There's not
26 enough doctors and nurses, in my judgment, or teachers, in any
27 prison in the state.

28 So, I'm missing the point of what was wrong with

1 getting a dialysis machine in Tehachapi.

2 MS. GOODMAN: Okay. It was not a functional area
3 to have it.

4 CHAIRMAN BURTON: In your judgment?

5 MS. GOODMAN: No, no. Not in my judgment.

6 CHAIRMAN BURTON: In whose judgment?

7 MS. GOODMAN: I'll get right to that in one
8 moment.

9 CHAIRMAN BURTON: In somebody's judgment.

10 MS. GOODMAN: In Health Services Division's
11 judgment.

12 CHAIRMAN BURTON: And the Department of
13 Corrections was so stupid they put one in there?

14 MS. GOODMAN: Actually, the Department of
15 Corrections, Health Care Services, actually, were very smart in
16 finding out that it was -- it should not go there.

17 The point that I --

18 CHAIRMAN BURTON: Someone put it there. He did
19 not say, "I want a dialysis unit."

20 MS. GOODMAN: Right. Okay, do you want to go on?

21 CHAIRMAN BURTON: Yeah, I'd like to.

22 MS. GOODMAN: Well, I thought it was really
23 important to mention that, and I'll tell you, it was because --
24 well, the fact of the matter is that we need to think about what
25 the inmates' care is going to be, and they're not going to get
26 it properly over there. And I think that the motivation was to
27 get more custody staff, more positions, and not give the care to
28 those people. If you would have saw that program --

1 CHAIRMAN BURTON: I'm starting to feel like John
2 Vasconcellos, and I don't want to feel that way.

3 [Laughter.]

4 CHAIRMAN BURTON: I love John.

5 Tell me how getting a dialysis machine gets you
6 more prison guards. I'm missing it. Briefly.

7 MS. GOODMAN: Briefly, if anyone gets sick, that
8 dialysis machine goes down, and they have to transport this
9 inmate out --

10 CHAIRMAN BURTON: But you just told me you didn't
11 even want a dialysis machine there, so they would have had to
12 transfer people anyway.

13 MS. GOODMAN: No. If any of those dialysis
14 machines go down --

15 CHAIRMAN BURTON: Right, but you're saying he was
16 wrong for getting one there. And if he didn't get one there,
17 they would have been transporting them anyway.

18 MS. GOODMAN: No. They would have been
19 transferred out to those facilities that gave them that
20 treatment.

21 CHAIRMAN BURTON: So, they would have been
22 totally transferred to another facility?

23 MS. GOODMAN: Yeah, that would probably -- most
24 likely that would happen.

25 CHAIRMAN BURTON: If the machine broke down
26 there, they'd need more guards to transfer them somewhere else?

27 MS. GOODMAN: No, you have a proximity distance.

28 CHAIRMAN BURTON: You're losing me on this issue.

1 MS. GOODMAN: I don't want to lose you on this
2 one.

3 CHAIRMAN BURTON: Well, you're losing me on this
4 issue, so why don't you wrap up with another one. It's an
5 interesting concept.

6 MS. GOODMAN: I thought that we needed to mention
7 that because of the liability issues.

8 Well, that's how I'll end it up. I just brought
9 these points to you. You have the binder, and we had talked
10 about the binder before. I responded to Mr. Carey, and I think
11 that his motivations and his decisions on many of the issues
12 were faulty, and therefore in my opinion, I would not support
13 this confirmation.

14 CHAIRMAN BURTON: Next.

15 How many more in opposition? Three, okay, fine.

16 Unless you have something to repeat that's not
17 an anecdotal thing, we've got three more wardens, the Governor's
18 Reorganization Plan, and four other appointees here.

19 Go ahead, sir.

20 MR. DICKINSON: I'm not going to repeat anything
21 that I've heard so far.

22 My name's Terry Dickinson. I'm a Correctional
23 Counselor II, CSP Solano. I've worked for the Department of
24 Corrections for approximately 20 years.

25 I've been Acting Associate Warden at CSP Solano
26 for the past seven months.

27 Specifically, Mr. Carey has neglected the
28 security of the institution. I did submit documentation to you,

to the top administrators in CDC regarding information that I've seen, information that I've heard, or knowledge, over the past year.

Specifically, the security issues you brought up earlier, Senator Burton, had to do with drain lines. I'm sorry to hear that the Warden still thinks that the issue is covers on drain lines.

Currently there are three lines that go under the electric fence at CSP Solano. Two of them are 42 inches in diameter; one of them is a little smaller. Those drain lines go under the electric fence from the no-man's land, from the areas where inmates walk on a daily basis, to the outside of the institution to an exit. At that exit, or at one of those exits, there is a cover over the exit with locks on it, two locks.

There is no security currently that is permanently at the front of that institution. Anybody can come off the street, off Peabody Road, drive into the institution, park in front of that drain line, and be there until somebody drives by and wonders why they're there.

To me, that's significant. Anyone could cut the locks off. Anyone could put their own locks on.

CHAIRMAN BURTON: In these drain things, it just got built in the last year?

MR. DICKINSON: No, these came when the institution was built.

CHAIRMAN BURTON: But it's never been a problem until he got there?

MR. DICKINSON: Well, I don't know. I brought it

1 up to Peggy Curran when she was there. I don't know how often
2 that she had it checked or searched.

3 I did find out -- I brought this up in November
4 at a meeting that the Warden was at, and all the executive
5 staff. Ms. Crawford did not bring it up. Ms. Crawford brought
6 up that life was, we're working in no-man's land, and we got
7 them out of no-man's land from working.

8 And then, when I found that out, I brought up the
9 issue that there are storm drains there, because if they're
10 running tractors in this no-man's land, they could have knocked
11 off one of the covers to that storm drain and escaped. That's
12 when I brought up the issue.

13 I said, "Someone needs to check because I know
14 there's several of them. I don't know how many."

15 The Warden gave direction to Odette Crawford,
16 who's the Acting Chief Deputy, to have that checked immediately.

17 CHAIRMAN BURTON: Which warden? This warden?

18 MR. DICKINSON: Warden Carey gave the direction
19 to have them checked immediately and report back.

20 CHAIRMAN BURTON: And?

21 MR. DICKINSON: I don't know what happened.

22 About a month later, I thought it was being taken
23 care of, because Odette was an Acting Associate Warden over at
24 Central Services at the time -- an Associate Warden over at
25 Central Services in charge of security investigations. That was
26 her unit. So, I didn't know whether it got handled or not until
27 one of her S&I officers came to my office and said, a month
28 later, and said, "What about these storm drains? I've been

1 assigned to the storm drains." I couldn't believe it --

2 CHAIRMAN BURTON: Why are they asking you?

3 MR. DICKINSON: Because I brought the issue up,
4 and they sent them to me.

5 CHAIRMAN BURTON: It sounds kind of stupid to me
6 that you brought it up, and so they're asking you as opposed to
7 asking the person who's supposed to have done it.

8 MR. DICKINSON: I agree. They shouldn't even
9 have asked me. That night, everybody should have stayed and
10 checked those storm drains, and everybody should have made sure
11 there wasn't an escape route. To this day, I don't know what's
12 happened with the storm drains. That's one issue.

13 Mr. Carey has abused his authority and threatened
14 to get back at staff. I'll leave it at that.

15 He has inappropriately used overtime to influence
16 staff.

17 There is a lack of leadership on his part
18 regarding inmate medical access and care.

19 He has misused state equipment at the -- misused
20 state equipment.

21 Mr. Carey has displayed a disregard for the
22 classification process. He does not attend institutional
23 Classification Committees.

24 His lack of interest for the conditions of
25 confinement. You have the documents that I submitted. I'm not
26 going to go into detail on each item; you have that.

27 I've talked to four different administrators in
28 CDC over the past four weeks. None of them have indicated that

1 they would look into or investigate the information that I've
2 provided, no one.

3 The only issue that they ask is, am I coming to
4 the confirmation:

5 SENATOR KNIGHT: Who did you ask?

6 MR. DICKINSON: Who did I talk to specifically?

7 SENATOR KNIGHT: You said you asked four
8 different CDC supervisors or what?

9 MR. DICKINSON: No, I talked with four different
10 administrators within CDC. Do you want to know their names?

11 SENATOR KNIGHT: No, no.

12 What's that got to do with the Warden here?

13 MR. DICKINSON: What's it got to do with the
14 Warden, because he's not handling his business at Solano because
15 of these issues I'm bringing up.

16 So, I tried to bring it to the CDC administration
17 to handle it.

18 SENATOR KNIGHT: They won't listen to you?

19 MR. DICKINSON: Yeah, four people listened to me.

20 SENATOR KNIGHT: What did they do?

21 MR. DICKINSON: I don't know, because they
22 haven't said what they were going to do. That was four weeks
23 ago.

24 SENATOR KNIGHT: That's not the Warden's fault;
25 is it?

26 MR. DICKINSON: The issue is, the Warden is not
27 being a leader at the institution. And therefore, I went to the
28 CDC administrators and informed them of the issues that I had.

1 I was sent to one, another, another, a fourth.

2 The final thing I want to say is, whether or not
3 you decide to endorse Mr. Carey to be confirmed as a warden is,
4 of course, up to you.

5 I'm requesting that an immediate investigation be
6 initiated into the information that I provided. That's what I
7 want. That's what I think the citizens of this state deserve,
8 an investigation into allegations that I present.

9 CHAIRMAN BURTON: Which ones?

10 MR. DICKINSON: Every one of them.

11 CHAIRMAN BURTON: The one where he told the
12 Associate Warden to check on the drainpipes --

13 MR. DICKINSON: No, the security. Whether
14 there's a security violation right now, today. That one and
15 every other one I listed.

16 CHAIRMAN BURTON: I tell what I would suggest, is
17 that you send us a letter with one, two, three, that we can
18 refer to the Inspector General.

19 MR. DICKINSON: I did send that to you, Senator.
20 I sent you the whole package.

21 CHAIRMAN BURTON: I know the whole package. I'm
22 telling you, send me a letter.

23 MR. DICKINSON: Okay.

24 CHAIRMAN BURTON: Do you know how many packages I
25 get?

26 MR. DICKINSON: No, I don't.

27 CHAIRMAN BURTON: A shit pot full.

28 [Laughter.]

1 CHAIRMAN BURTON: I started off today with very
2 bad news. I'm not in a good mood, and these hearings are
3 getting me up to a level I cannot stand. It's nobody's fault in
4 this room but mine.

5 Send a letter, one page, two page, couldn't care
6 less, with specific issues to be addressed. And send it to
7 Nettie Sabelhaus, and Nettie's right there.

8 And the Committee will refer it to Steve White,
9 the Inspector General, who will then do that. I'm not sure how
10 long it ever takes. He gets back pretty quick.

11 But I think some of the issues you raised are
12 very serious. And fortunately, at least we haven't read of any
13 escapes down there, but if we read of one, something terrible
14 happened, we will feel very bad not to be looking into that
15 issue.

16 So again, I'm kind of at a loss why all of this
17 stuff fell on your shoulders and not somebody else's, but that's
18 something that we're going to have the Department of Corrections
19 come up after and discuss it.

20 Thank you very much.

21 MR. DICKINSON: Thank you.

22 CHAIRMAN BURTON: Next.

23 MR. LONG: Mr. Burton, my name is Robert Long.
24 I'm a Correctional Counselor at the California State Prison
25 Solano.

26 I've worked for CDC about 12-and-a-half years.
27 I've worked with lot of the people that are in this room today.
28 I've worked at three different correctional institutions. I

1 have extensive knowledge and experience in my field of work.

2 By the way, I used vacation time to come here
3 today.

4 The reason that I'm here is because some of the
5 unfair, unethical, and possibly illegal hiring practices at CSP
6 Solano.

7 Mr. Carey has condoned retaliatory acts against
8 me that I brought to his attention. I'm under the impression
9 they might be being investigated right now. He's presented some
10 falsehoods to me. They had to do with the hiring practices and
11 thwarted my efforts to promote.

12 I believe the Rules Committee has an outline and
13 a chronological history that was sent to them. I gave it to
14 Ms. Sabelhaus.

15 I will not single out Mr. Carey as the only
16 individual that condones the unethical hiring practices in CDC.
17 However, the fact is that he's had the power to correct the
18 wrong doing and has elected to be a passive bystander.

19 As a taxpayer and citizen of the State of
20 California, I want individuals in office that have moral
21 character to say no to their subordinates and superiors when
22 they're doing wrong or breaking the law. His condoning of the
23 unethical and possibly illegal acts will result in litigation
24 against the CDC, and ultimately the taxpayers will have to pay
25 the price for them.

26 Did you guys receive the outline?

27 CHAIRMAN BURTON: Yes, thank you.

28 Any other witnesses? Are you standing up to come

1 up? Let's get moving.

2 Go ahead.

3 MS. STANWICK: Hello, my name is Roberta Lunes
4 Stanwick. I work at CCI. I've worked there for 22 years, two
5 of the last years as an office technician, and ten years as an
6 accounting technician, and ten years prior to that as a medical
7 technical assistant.

8 I was raised in Tehachapi. I'm here to tell you
9 that I do not -- I do not want Mr. Carey to be confirmed as
10 Warden. When he was Warden at CCI, he demonstrated unethical
11 hiring and promotional practices, discrimination, and harassment
12 of certain employees, diverted custody staff for noncustody and
13 safety purposes, and demoralized the CCI staff.

14 Mr. Carey created a position for a Registered
15 Nurse II and hired his wife, Mrs. Carey, for that position.
16 That RN-II position was not needed and added additional costs
17 and problems to the Medical Department.

18 This also created a conflict of interest between
19 Mr. Carey, the Medical Department, and the Mental Health
20 Services policies, procedures, and staff needs.

21 As Warden at CCI, Mr. Carey violated the
22 separation between church and state. He created, hired,
23 promoted in field positions with fellow members of his local
24 church. The hiring and promotional interviews were a sham. The
25 positions being filled and employees being hired or promoted
26 were pre-selected and were members of his church.

27 The employees at CCI were not made aware or
28 informed that during Skelley hearings, that the Equal Employment

1 Relationship Officer present during the hearings was also a
2 member of his church. It is now the opinion of many CCI
3 employees that the outcome of the Skelley hearings were pre-
4 determined.'

5 An employee who received a reasonable work
6 accommodation, I believe, under the Americans with Disabilities
7 Act, was ousted from her position and a fellow member of
8 Mr. Carey's church was placed in that position.

9 As Warden at CCI, Mr. Carey had the limited
10 available parking spaces changed to restricted designated
11 parking spaces for administrative staff's use in all five
12 parking levels. Only administrative staff and their office
13 assistants and secretaries were allowed to park in these spaces,
14 whether they were absent or not.

15 These designated parking spaces further limited
16 the available parking for the handicapped, caused rank and file
17 staff to walk even further to their work sites, and restricted
18 parking to employees conducting state business during second and
19 third watch.

20 I myself witnessed many verbal confrontations
21 between administrative staff and rank and file staff over
22 parking spaces.

23 Mr. Carey was adamant about the designated
24 parking spaces. To make certain that non-designated staff were
25 not using these parking spaces, Mr. Carey allowed first, second,
26 and third watch outside sergeants to be redirected from their
27 custodial duties to observe parking lots and ticket errant
28 employees. The correctional officer assigned to collect was

1 kept busy researching license plates of rank and file parking
2 space offenders. One employee, myself, who continuously
3 protested the parking restriction as an American, as a taxpayer,
4 as a citizen --

5 SENATOR KARNETTE: Excuse me.

6 Can't you get that in your contract? We did that
7 with the teachers.

8 MS. STANWICK: No.

9 SENATOR KARNETTE: You can't just negotiate
10 something about parking spaces?

11 MS. STANWICK: No, ma'am.

12 SENATOR KARNETTE: Why not?

13 MS. STANWICK: You'll have to ask --

14 SENATOR KARNETTE: Well, you can. I bet you, you
15 can.

16 MS. STANWICK: No, I tried. I tried. It has
17 only been done with speaking through the Warden personally by
18 the other, Brand X Union, who has more members and more money.

19 When I protested the parking restrictions, I
20 received an adverse action resulting in a five percent decrease
21 in pay for six months.

22 CHAIRMAN BURTON: I don't want to deal with
23 parking spaces.

24 MS. STANWICK: I'm sorry you don't, but this -- I
25 want to --

26 CHAIRMAN BURTON: Next witness.

27 MR. ENNIS: Hello. My name is Jerry Ennis. I'm
28 a Senior Radiological Technologist at California Correctional

1 Institute. I've been employed there for ten years.

2 I worked with Mr. and Mrs. Carey for a couple of
3 years, and they are really nice people.

4 But we've had problems, and I'd like to -- prior
5 to hiring Tamsin Carey, Warden Carey's wife, as a Supervising
6 Registered Nurse II, CCI Medical made several attempts to create
7 the position. One staff member was handed a memo from
8 Sacramento addressed to the Health Care Manager which --

9 CHAIRMAN BURTON: Slow down.

10 MR. ENNIS: I'm sorry. I'm nervous.

11 One staff member was handed a memo from
12 Sacramento addressed to the Health Care Manager which discussed
13 the request for the SRN-II position. The memo stated in part,
14 "Your request is denied. SRN-II positions are assigned to CTCs
15 and other licensed facilities. CCI is classified as an
16 out-patient housing unit, OHU, and is not eligible for this
17 classification in staffing."

18 Then, that didn't work, so we acted -- they
19 activated a SHU Unit, Segregated Housing Unit at IV-A, which is
20 one of the facilities at CCI. When the decision was reached to
21 activate the IV-A as a Security Housing Unit, SHU, our SRN-I
22 attended all the pre-activation committee meetings. All other
23 medical service departments where the workload would be
24 seriously impacted by the SHU activation were led to believe
25 that SRN-I -- I won't give her name -- was representing the
26 entire medical department's staffing needs.

27 The SRN-I was indeed able to secure five
28 positions for the medical department. Four were assigned as

1 registered nurses, and one medical position was given to mental
2 health. Mental health had already received two positions
3 through the Coleman SHU package in that activation.

4 So then, hiring interviews were scheduled for the
5 four RN positions and an SRN-II position. The SRN-II position
6 was also tied to SHU activation package; however, it was not
7 identified in the original IV-A SHU staffing package. One of
8 the RN positions was upgraded to an SRN-II on the local level.

9 State Personnel guidelines do not allow funding
10 of a Supervising Registered Nurse II for a Security Housing
11 Unit. And I have the job specifications here. They have to be
12 a licensed facility.

13 Hiring interviews were scheduled for the RN
14 positions -- sorry. Dr. Liebman, he was the acting Health Care
15 Manager at the time, he refused to be a part of the interview
16 panel for the SRN-II due to what appeared to be an illegal
17 action, the fear of alienation and retaliation by
18 administration. He requested that a higher level health care
19 administrator be sent to CCI for the interviews. Tom Voss, the
20 Regional Administrator, and Vickie Schlone, Correctional Health
21 Services Administrator II out of Sacramento, came to CCI, sat on
22 the hearing panel, and hired the Warden's wife, Tamsin Carey, as
23 the SRN-II. Curtis Madding, the Chief Dental Officer, was
24 scheduled to sit on the panel, but at the last minute was
25 replaced, and Dr. Liebman did -- sat on the panel.

26 Work schedules and hiring justifications for the
27 IV-A SHU were submitted by RN supervisors. This appears to be a
28 falsification of the need for RN staff to work in the SHU Unit

1 for the expressed purpose of obtaining approval to hire RN staff
2 versus MTA staff. The schedules were submitted identifying
3 placement of RN staff in the Security Housing Unit. When the
4 four RNs were approved for hire, they were all diverted to work
5 assignments other than the SHU.

6 SENATOR JOHNSON: Mr. Chairman.

7 When this began, I was a relatively young man. I
8 wonder if we could kind of synthesize and speed this up. I
9 mean, in a sentence or two, you don't like him.

10 CHAIRMAN BURTON: This is about the process that
11 allowed his wife to be hired at the prison?

12 MR. ENNIS: Right.

13 CHAIRMAN BURTON: Is it other stuff beyond that,
14 or is that basically it?

15 MR. ENNIS: There's other stuff beyond that.

16 CHAIRMAN BURTON: You don't have to read it.
17 Just tell us like you're telling a friend.

18 MR. ENNIS: Okay. Basically, with the SHU
19 package, when you get a SHU package from Sacramento, it's for
20 departments that are being impacted by the SHU. That's why you
21 gets extra personnel.

22 CHAIRMAN BURTON: Right.

23 MR. ENNIS: They give us five positions. They
24 turned them all into the nurses, and they put them every where
25 but the SHU.

26 CHAIRMAN BURTON: And the whole purpose of that
27 was?

28 MR. ENNIS: Was to get to put RNs in all the

different clinics and start something going with that, which is in force still. It's still working.

CHAIRMAN BURTON: And the problem with that is?

MR. ENNIS: Is that departments that were getting impacted, like laboratory, radiology, the office assistants, the MTAs, all the ones who were getting impacted got nothing.

CHAIRMAN BURTON: In other words, it all comes out of the money pot for the prison, and if you're hiring excess RNs, so to speak, you've got to take it out of somewhere else?

MR. ENNIS: No. The main part about this, it was an illegal action on the Warden's part. You are not to take an RN that's to be utilized in the SHU and put them four miles away.

CHAIRMAN BURTON: Okay. I got it.

MR. ENNIS: That's what is the bad thing about this.

CHAIRMAN BURTON: Now, what I would suggest with that, because this is the first time we heard of this specific issue, is that we would get that information and refer that issue to the State Personnel Board.

MR. ENNIS: I see. I contacted -- before it even happened, I went to the Warden to try to fix things.

CHAIRMAN BURTON: No, I was talking about us.

MR. ENNIS: I already went to the State Personnel Board, and they said it's illegal; you can't do that, for me to talk to my personnel department.

I talked to them. They said yes, it is illegal, but "I do what I'm told."

1 SENATOR KARNETTE: I thought the Chief Medical
2 Officer made those decisions.

3 MR. ENNIS: Well, he's supposed to, yeah.

4 SENATOR KARNETTE: Then he's the one who's at
5 fault; right?

6 MR. ENNIS: See, that's another problem we had.
7 I talked to the Warden a lot about who's the most powerful.
8 Like, they're supposed to be equal, the Warden and the Chief
9 Medical Officer, but we all know --

10 CHAIRMAN BURTON: The Chief Medical Officer over
11 medical, and the Warden over the custody.

12 MR. ENNIS: And they're supposed to be totally
13 equal, separate budgets, all that. But we all know that the
14 Warden has the upper hand because he can put the Chief Medical
15 Officer's face at the front gate, and he will not be able to
16 enter the grounds. So, he is more powerful. He's the most
17 powerful person in the prison.

18 CHAIRMAN BURTON: But the State Personnel Board
19 said that --

20 MR. ENNIS: They said it was an illegal action,
21 that we couldn't do it, for me to talk to my personnel
22 department. I talked to them and they said, "Yes, Jerry, it is
23 illegal."

24 CHAIRMAN BURTON: Okay, and this is something
25 that you can't really undo because it's been done?

26 MR. ENNIS: Now it's been done. At the time it
27 hadn't been done. Now it's too late.

28 CHAIRMAN BURTON: Do you know who you talked to

1 at the State Personnel Board?

2 MR. ENNIS: Yeah, and I ended up -- yeah. It's
3 already been done. It's a done deal now.

4 CHAIRMAN BURTON: I understand that, but I mean,
5 if somebody allegedly did an illegal act, or whatever it is,
6 it'd just be interesting for us to know.

7 MR. ENNIS: Well see, this happened in 1998. A
8 year later we had the same scenario with the same players. I
9 talked to him again, and the same exact thing happened. They
10 did the exact same thing. Turned every position into RNs.

11 CHAIRMAN BURTON: I think we'll have our staff
12 check that out with the Personnel Board.

13 MR. ENNIS: And they put all these positions
14 again everywhere but where they were supposed to go. So, it
15 doesn't matter. They all knew by then.

16 I even got a memo I gave to Warden Carey, which
17 he didn't answer, and then fine. I kept bugging him about it,
18 and so he gave it to my boss, which was the Health Care Manager,
19 and he just writes something about, oh, you don't need another
20 x-ray tech. That was his answer. And my questions were not
21 even about that at all. I have the memo here that I gave him.

22 CHAIRMAN BURTON: Afterwards why don't we get
23 that information.

24 MR. ENNIS: Okay. And then that happened again,
25 so that's the problem with the SHU package. That really upset
26 the entire medical department.

27 CHAIRMAN BURTON: Okay, we got that.

28 MR. ENNIS: Okay.

1 Now I want to go to the hemodialysis unit just a
2 little bit. It's just one paragraph, and you'll totally
3 understand.

4 CHAIRMAN BURTON: Fine.

5 MR. ENNIS: The Warden has decided that CCI will
6 pursue --

7 CHAIRMAN BURTON: We got that. I want to know
8 what was wrong with it.

9 MR. ENNIS: Okay. Well, the reason why they
10 didn't do it was because it was too far away from any city.
11 It's like 40 miles. That's why we didn't have -- we did not
12 have inmates there at the time that needed dialysis, but we were
13 going to ship them in, and they would be housed at the housing
14 unit, Level IV, and then we'd have to ship them down two miles
15 to a Level II, which is totally against the rules. You're not
16 supposed to go down the hill.

17 Anyway, that was the problem with the
18 hemodialysis.

19 CHAIRMAN BURTON: I'm lost. Did he get a
20 dialysis machine or didn't he?

21 MR. ENNIS: No, we never got one.

22 CHAIRMAN BURTON: Then why the hell were they
23 even talking about it? He asked for one and never got it.

24 MR. ENNIS: He was trying his best to get one.

25 CHAIRMAN BURTON: I know that.

26 MR. ENNIS: To justify -- we felt the reason that
27 he wanted the hemodialysis was to justify his wife's position,
28 because then we would be a licensed facility if we were a

1 hemodialysis unit.

2 CHAIRMAN BURTON: There'd be a cheaper way for
3 somebody to get somebody a job than get a dialysis machine, I
4 think.

5 MR. ENNIS: She already had a job. Believe me,
6 she was there. Okay.

7 Then the AGPA position you've all ready heard
8 about that, about the church member.

9 Approximately two years -- in 1998, we had eight
10 positions. After they all got together and turned all these
11 into nurses, we had 20 nurses positions, but nothing had
12 changed. We still were an out-patient housing unit, but they
13 were using these nurses, which cost more money than an MTA to do
14 the jobs where the MTAs are at. But now they're in each level,
15 but they're only there on second watch. Like on weekends,
16 they're not there. On holidays they're not there. It just
17 doesn't make much sense. You know, these nurses just work
18 second watch, and they should be there when the physicians
19 aren't there.

20 CHAIRMAN BURTON: So, the reason that the medical
21 officer does not have any juice at the prison is that the
22 Warden's able to give him a bum parking space? That's
23 overstating it, but I mean, they could put him way down
24 somewhere?

25 MR. ENNIS: They seriously did that.

26 CHAIRMAN BURTON: It's kind of like Senator
27 Karnette said with the union; there's something wrong with the
28 doctor, because the Legislature went through a lot of trouble to

1 separate the medical from custodial.

2 MR. ENNIS: See, we had an ombudsman come from
3 Sacramento to straighten out some of the problems. She fixed
4 the parking situation. All the doctors each had their own
5 parking space at one time, all the physicians.

6 Now, the only ones who have them are lieutenants,
7 and captains, and wardens, and one's for the CMO. So, things
8 aren't right.

9 And she was contacted, and they took down a bunch
10 of signs, but it's still not the way it's supposed to be.

11 CHAIRMAN BURTON: If you can close, please.

12 MR. ENNIS: Well, at one point in time, he took
13 six MTA positions and turned them into officer positions. We
14 only had a few MTAs at the time. We were like down 16 MTAs, and
15 he turned 6 of them into officers. But then later that was
16 reversed because once you turn them, you can't turn them back.
17 So, that was reversed. And that really upset the MTA staff and
18 medical staff.

19 And then, there for a while we were accepting
20 patients in the OHU, which we weren't even supposed to have
21 there, you know, like paraplegics, and quads, and nurses was
22 hurting their backs, breaking their wrists. But I think they
23 were trying to make it into -- anyway, that's it.

24 I humbly request your intercession on behalf of
25 all the classifications of labor in the State of California to
26 deny the confirmation of Warden Carey.

27 I've also got a letter from the Inspector
28 General, too, over all that.

1 CHAIRMAN BURTON: Okay.

2 More witnesses opposition?

3 Is somebody from Corrections here?

4 We're going to take a break.

5 [Thereupon a brief recess

6 was taken.]

7 CHAIRMAN BURTON: The Committee will be back in
8 session.

9 Department Of Corrections.

10 MR. TRISTAN: Mr. Chairman, Members of the Senate
11 Subcommittee, my name is David Tristan. I am the Chief Deputy
12 Director for Field Operations for the Department of Corrections.

13 The first thing I'd like to propose in an effort
14 to try to resolve the CSEA labor-management issues, is that I
15 form a committee, and that that committee be comprised both of
16 labor relations people from Sacramento, the Deputy Director's
17 Office, and the Regional Administrator's Office, to work with
18 CSEA, the Warden and his management team, to try to resolve as
19 many of these issues as possible.

20 CHAIRMAN BURTON: Are you going to include
21 members of CSEA?

22 MR. TRISTAN: Absolutely. They would be meeting,
23 and I'm proposing that we do this within the next two weeks, to
24 begin to meet. And then we would report all of our solutions,
25 resolutions, findings, back to this Committee within a couple of
26 months. I think it may take that long.

27 CHAIRMAN BURTON: I think we would want some kind
28 of progress report prior to a couple months. I think you want

1 to --

2 MR. TRISTAN: Speed it up.

3 CHAIRMAN BURTON: Yeah.

4 MR. TRISTAN: We'll try to do it as quickly as
5 possible, Senator.

6 On some of these other issues, I'd like to try to
7 address at least some of these for the Committee.

8 One is that you were correct, Senator, when you
9 said that the Legislature worked very hard on separating the
10 custody side of the house, that the warden supervises and
11 manages, and the medical side of the house, or Health Care
12 Services. The Health Care Services budget is totally separate
13 from that of the custody side. We cannot move monies,
14 positions, equipment, from one line item to another line item.

15 Therefore, if positions were allocated by Health
16 Care Services, by Department of Finance for certain kinds of
17 functions, the Warden does not have the authority to redirect
18 those positions over onto custody side, nor does he have the
19 authority to reclass those positions. The Department of Health
20 Care Services within the Department of Corrections is the one
21 that has that authority, not the Warden.

22 The other, in terms of the hiring processes. Our
23 hiring processes are totally separate. Health Care Services
24 chain of command does their own examining, testing, under the
25 Civil Service rules and guidelines. They do their hiring. The
26 Warden does not sit on those panels, and the hiring is affected
27 by Health Care Services Division.

28 The Warden is responsible for the hiring

1 processes and the final authority on the custody,
2 classification, business side of the house, but not the Health
3 Care Services side of the house.

4 In terms of the issue relative to the drain
5 pipes, we have similar storm drains at almost every institution.
6 Typically, they are inside the institution, and most of them run
7 to some point outside the institution.

8 The typical functions which I understand are
9 occurring there are that they are either spot-welded shut or
10 they have padlocks, security locks, on them. And they're
11 checked on a daily basis by the inside patrol, those that are on
12 the inside.

13 There are logs where the officers have to
14 register that they are -- have been checked. Then we have the
15 outside patrol that also checks the outside storm drains.

16 We also have the Administrative Officer of the
17 Day that goes around on weekends and takes a look at security
18 issues.

19 CHAIRMAN BURTON: So, you have the logs of --

20 MR. TRISTAN: I don't have them with me. Yes, we
21 do have logs.

22 In addition to that --

23 CHAIRMAN BURTON: But the logs, do you of your
24 own knowledge, have you ever seen the logs of Solano to know
25 whether or not they're doing what the SOP is?

26 MR. TRISTAN: No, Senator, I have not seen
27 those.

28 CHAIRMAN BURTON: Maybe you want to check and let

1 us know.

2 MR. TRISTAN: We will do that, Senator.

3 In addition to that, we have security audits.
4 They go look at these. They check to make sure that they're in
5 compliance with departmental policy, procedures, and these are
6 security audits.

7 In terms of the some of the other issues that
8 were brought before this Committee, is that all of our hiring
9 processes are double checked and checked by Headquarters
10 personnel, whether it's Health Care Services or on the
11 institution sides. And they're supposed to be according to
12 Civil Service processes. If an employee feels that they've been
13 aggrieved or wronged as a result of the hiring process, there
14 are procedures by which they can address that.

15 CHAIRMAN BURTON: Forget the hiring process for a
16 minute.

17 The one thing, and it was the first witness, she
18 said -- and I don't know if it was in that prison or whether
19 it's system wide -- but whoever did stuff was only familiar with
20 the Unit 6 contract and not theirs. And they would go to
21 arbitration on a beef.

22 The arbitrator would find for them. And the
23 very, could be, and these are my words, but maybe the next day
24 or the next week there would be the exact same situation that
25 would require and interpretation of their contract. Instead of
26 following the arbitrator's decision, I can't remember the legal
27 term, the decision precedent, they have them start over, and
28 they're going through the whole thing.

1 If that's a fact, that makes no sense.

2 MR. TRISTAN: You're right, Senator. I can't sit
3 here and say that we have not done that.

4 CHAIRMAN BURTON: She talked about specifically,
5 I guess, about this institution. So, if the Warden could
6 comment on that.

7 MR. TRISTAN: But Senator, if I could just
8 address for one second that if there's an arbitor's decision,
9 and we violate that arbitor's decision, then that union can take
10 us back to court.

11 CHAIRMAN BURTON: Yeah, but they shouldn't have
12 to. It seem to me that you're not violating that decision, but
13 there's a precedent there that says whatever.

14 In other words, it would be like Andy
15 Messerschmidt and the other one who got free agency, and then
16 all of a sudden that was the rule in baseball, free agency. But
17 it'd be like every time somebody wanted their free agency, they
18 had to start over again.

19 I think the point wasn't so much that they were
20 violating the arbitrator's decision in that one case, but the
21 similar thing comes, and they got to go through the whole
22 process.

23 I wonder if the Warden could comment on that?

24 MR. CAREY: Yes, I can.

25 Under my tenure, there has not been an
26 arbitration award for CSEA at Solano.

27 Ms. Villaronga has filed three grievances with
28 her as the representative, and two grievancés, her as the

1 grievant and as the one to be responded to. Those have all been
2 addressed.

3 CHAIRMAN BURTON: Then it must be a system wide.
4 If it hasn't happened there while he was there, then it may be
5 some problem somewhere. In fact, I think she did say system.

6 But it would just seem something to check on
7 because it does take a hell of a lot of time and effort to
8 basically, if the arbitrator finds that the contract means
9 there's three coffee breaks. The next person who takes three
10 coffee breaks shouldn't have to go, whatever it is, shouldn't
11 have to go through the whole thing.

12 MR. TRISTAN: You're correct, Senator. We can
13 take a look at that.

14 CHAIRMAN BURTON: Did you have other stuff?

15 MR. TRISTAN: No, Senator, unless the Committee
16 or you have questions.

17 CHAIRMAN BURTON: Questions, Members of the
18 Committee?

19 SENATOR KNIGHT: I think it's been covered.

20 CHAIRMAN BURTON: I'll tell you what. It's the
21 pleasure of the Chair, or a suggestion, is that this would be
22 moved to the Floor, but would be held there pending, one, a
23 report back on the labor relations stuff. Two, to see what the
24 State Personnel Board said, whether or not it was a fact. And
25 three, to see if we could get an official thing on the
26 Inspector General.

27 And for the record, the staff, not that it would
28 matter to many, but the staff did go down, and the Inmates

1 Council were strongly positive about the work that you've done
2 there, which to me means as much as most of this stuff.

3 Call the roll on the nomination.

4 SECRETARY WEBB: Senator Karnette.

5 SENATOR KARNETTE: Aye.

6 SECRETARY WEBB: Karnette Aye. Senator Knight.

7 SENATOR KNIGHT: Aye.

8 SECRETARY WEBB: Knight Aye. Senator Johnson.

9 SENATOR JOHNSON: Aye.

10 SECRETARY WEBB: Johnson Aye. Senator Burton.

11 CHAIRMAN BURTON: Aye.

12 SECRETARY WEBB: Burton Aye. Four to zero.

13 CHAIRMAN BURTON: Congratulations.

14 MR. CAREY: Thank you.

15 CHAIRMAN BURTON: Silvia Garcia, Calipatria,
16 Level IV institution.

17 MS. GARCIA: 'Good afternoon, Senator and
18 Committee Members.

19 CHAIRMAN BURTON: Where is Calipatria?

20 MS. GARCIA: Where is Calipatria? It's 45 miles
21 south of the Mexican border [sic], and we're about an hour away
22 from the Palm Springs area.

23 CHAIRMAN BURTON: Which county?

24 MS. GARCIA: Imperial County, Brawley.

25 CHAIRMAN BURTON: I've been to Brawley.

26 MS. GARCIA: Thank you.

27 I'm going to keep my introduction short.

28 My work experience in the Youth and Correctional

1 Agency for the last 20 years and my education have provided me
2 with the skills necessary, I believe, to assume the vast
3 responsibilities associated with the management of an
4 institution: I earned a Bachelor Degree in psychology and urban
5 studies from Occidental College, and a Master's Degree in social
6 welfare from UCLA.

7 Managing an inmate population that includes 1600
8 inmates serving life term sentences is a challenging task and
9 requires us to try different aspects of programming. Our
10 in-cell six-week re-entry program, Life without a Crutch, and
11 Straight Life Program has helped us keep the inmate population
12 focused on the positive aspects of life. We are in the process
13 of implementing a veterans group and a lifer program as well.

14 The success of the programs already in place is
15 due to the staff's commitment to the task and the passion that
16 they have demonstrated for the job that they do.

17 It is an honor to have the opportunity to receive
18 your consideration for my confirmation as Warden at Calipatria
19 State Prison.

20 Thank you.

21 CHAIRMAN BURTON: Couple questions.

22 You have an in-cell pre-release program?

23 MS. GARCIA: Yes.

24 CHAIRMAN BURTON: Do you think it's better than
25 doing it in a classroom situation?

26 MS. GARCIA: The response from the inmates is
27 much more positive. The inmate works at his own pace. The
28 instructor goes from cell to cell, and we use the institutional

1 video program as part of the instructional process.

2 CHAIRMAN BURTON: And you start, and I think we
3 had this with the other one, you start it when prior to release?

4 MS. GARCIA: Anywhere from 45 to 60 days prior to
5 release. However, we also make it available to the -- it's
6 actually, we start the process six to nine months, depending
7 when the inmate arrives.

8 We also make it available to the other inmates as
9 well. So, they can turn on their t.v., and they have access to
10 the life curriculum.

11 CHAIRMAN BURTON: So, let's assume, if it's in
12 the cell, they could at least watch a video every night or
13 something. Do you have one video, several videos, what?

14 MS. GARCIA: Several videos. We have anger
15 management. We have --

16 CHAIRMAN BURTON: The anger management probably
17 comes earlier in their incarceration; no?

18 MS. GARCIA: We start it early in the
19 incarceration.

20 CHAIRMAN BURTON: How about like getting ready
21 for the world?

22 MS. GARCIA: That comes at the latter part. We
23 used to have DMV and Social Security come out, but they, based
24 on manpower, they don't do that. So, the instructor completes
25 the paperwork for the inmate on filling out the Social Security
26 application and the DMV, and we mail it. And then, if there's
27 any problems, the instructor goes back and checks it.

28 CHAIRMAN BURTON: How often does the instructor

1 see an individual?

2 MS. GARCIA: He tries to see each individual at
3 least once a week. He goes from cell to cell.

4 CHAIRMAN BURTON: And for how long a period of
5 time?

6 MS. GARCIA: Depending on what the inmate's needs
7 are.

8 CHAIRMAN BURTON: Let's assume their needs are
9 somebody getting out of prison.

10 MS. GARCIA: Anywhere from 30 to 45 minutes.

11 SENATOR KARNETTE: How many times?

12 CHAIRMAN BURTON: They go back?

13 MS. GARCIA: Yes, uh-huh. What we have is four
14 facilities where the inmates do not mingle. They are
15 stand-alone facilities. So, the instructor will go to Facility
16 A and take care of the population there, the in-cell.

17 CHAIRMAN BURTON: How many instructors do you
18 have on that?

19 MS. GARCIA: I have one instructor.

20 CHAIRMAN BURTON: Only one in the whole prison?

21 MS. GARCIA: For the in-cell, yes. We have one
22 backup that provides support for him.

23 CHAIRMAN BURTON: I would think that the most
24 important part, in my judgment, of the person's term in prison
25 is getting ready to go out, so hopefully they don't come back.

26 There's only one person doing that?

27 MS. GARCIA: Yes, sir. Right now that is true.

28 SENATOR KARNETTE: How many people are getting

1 out?

2 MS. GARCIA: How many people are getting out?

3 SENATOR KARNETTE: How many people would be
4 getting out, say; in that however many days you have? Six
5 months, how many people would be in the program, roughly?

6 MS. GARCIA: Roughly, 30 to 40 people. Since we
7 started the program in March of 2000, we have processed about
8 170 inmates who have paroled using the re-entry program. That
9 does not include the other 100 and some that have already --
10 that have still -- are still participating, even though they
11 don't have a current release date.

12 CHAIRMAN BURTON: What's the classification of
13 the person that does this? Are they teachers, counselors?

14 MS. GARCIA: This one is a teacher right now.

15 CHAIRMAN BURTON: And they're usually a teacher
16 or counselor; right?

17 MS. GARCIA: Teacher is the classification we
18 use.

19 CHAIRMAN BURTON: Not counselors?

20 MS. GARCIA: No, sir.

21 CHAIRMAN BURTON: You'd think they'd have
22 counselors. Why are they classified as teachers?

23 MS. GARCIA: Because they focus on the
24 educational components.

25 CHAIRMAN BURTON: No, they're trying to focus
26 them on getting ready to go out, not who George Washington was.
27 I mean, I would think that if you're talking anger management,
28 if you're talking getting ready to get into the world, that you

1 really don't need somebody to teach you math or geography. You
2 need somebody that's kind of skilled at that.

3 MS. GARCIA: Our counselors are more like case
4 managers and do not focus on counseling per se.

5 CHAIRMAN BURTON: Then what do they do?

6 MS. GARCIA: They process the inmates' caseload,
7 schedule them for classification, process their family visiting
8 application, and --

9 CHAIRMAN BURTON: They shuffle paper?

10 MS. GARCIA: The case managers, yes, sir.

11 CHAIRMAN BURTON: I'm trying to understand, cause
12 I think again, the most important thing, if they ain't locked up
13 for life, do you want somebody to help these people figure out
14 what got them into trouble and what'll keep them out of trouble.
15 And I don't think -- and I don't know whether that's the
16 Department or what -- but I don't think the teachers are the
17 ones to do that.

18 Where is the guy from Corrections? Did he take a
19 hike?

20 Doesn't that make sense? The pre-release would
21 be more counselors than teachers?

22 MR. TRISTAN: That may make sense, Senator;
23 however, when the curriculum, pre-release curriculum was
24 developed, it was developed along the educational lines. And
25 so --

26 CHAIRMAN BURTON: Tell me what they educate?
27 Anger management's not education.

28 MR. TRISTAN: Those are some of the components to

1 pre-release that have been added after the fact.

2 CHAIRMAN BURTON: What does it take to get
3 something to make sense? I'm all for school teachers. Like I
4 said, my brother taught at Quentin for 20-something years. He
5 may or may not have been all right counseling a guy to get out;
6 although, I have questions. But he was teaching some of the
7 prisoners third and fourth grade level stuff.

8 I would think you would need -- that's how we've
9 always done it, so that's why we're doing it?

10 MR. TRISTAN: No. At some points in our history,
11 we have used counselors. More recently in our history, the
12 counselors are caseload ratio based for, as Warden Garcia was
13 talking about, managing the cases.

14 CHAIRMAN BURTON: It means like they're shuffling
15 papers instead of counseling people.

16 MR. TRISTAN: Well, I think --

17 CHAIRMAN BURTON: I used to shuffle papers, so
18 I'm not against it.

19 [Laughter.]

20 MR. TRISTAN: Senator, it's something that we can
21 take a look at. However, we need classification positions.

22 CHAIRMAN BURTON: No, this hearing's gone long
23 enough.

24 But I really think that you should take a look,
25 because anger management's not something that you learn at state
26 college. It's something you learn if you're a psychologist or a
27 marriage and family counselor, or who knows what. You certainly
28 don't need a general secondary or major in mathematics. I don't

1 know if they teach that, but I think that would just be
2 something to take look at.

3 MR. TRISTAN: We can certainly take look at it,
4 but I know --

5 CHAIRMAN BURTON: Thanks. Why don't you just
6 stay there in case we have questions.

7 You know that the concerns or complaints that the
8 supervisors have made. Do you want to comment on them before or
9 after they testify?

10 MS. GARCIA: I'd like to do it before.

11 CHAIRMAN BURTON: One is the two deaths?

12 MS. GARCIA: The two deaths, one of them was on
13 First Watch, and the other one was on Third Watch.

14 Whenever we have any medical emergency response,
15 we review the process in terms of how quickly we responded, was
16 medical care initiated.

17 The first death we received, it was a man down
18 call. And we responded to the cell within five minutes. He was
19 -- triage started, and he was moved to the central infirmary
20 within ten minutes of the call being down.

21 CHAIRMAN BURTON: What did he die of, heart
22 attack?

23 MS. GARCIA: No, there was alcohol intoxication
24 and some drug overdose.

25 CHAIRMAN BURTON: Alcohol intoxication and what?

26 MS. GARCIA: Drug overdose.

27 CHAIRMAN BURTON: He was in prison?

28 MS. GARCIA: Yes, sir.

CHAIRMAN BURTON: Did you then have an investigation as to how he got the booze and the drugs?

MS. GARCIA: No, we did not.

CHAIRMAN BURTON: Why wouldn't you? You're not supposed to have booze and drugs in prison.

MS. GARCIA: We're not supposed to. We do have a random cell search to make sure, especially before holidays or release --

CHAIRMAN BURTON: No, some guy died of basically whiskey and drugs, and nobody says how about an investigation maybe to see who is the last guy to talk to this person about how it happened?

MS. GARCIA: We talked to his cell partner, and he informed us that they had been drinking inmate-manufactured alcohol during the day, and that they stayed in their cell. And he didn't think there was any problem, and so --

CHAIRMAN BURTON: How about the drugs?

MS. GARCIA: We reviewed his medical chart to make sure that there wasn't -- whether he was receiving that medication. He was not. We did interview the cell partner. The cell partner did not know. We searched the cell and couldn't find anything.

CHAIRMAN BURTON: The question to me wouldn't be -- obviously there had been drugs in the cell, I guess, if they stayed in the cell all day. You were able to verify that; right?

MS. GARCIA: Yes, through his cell partner.

CHAIRMAN BURTON: How about through your own

1 people? You'd take the word of his cell partner?

2 MS. GARCIA: No, also.

3 CHAIRMAN BURTON: Wouldn't somebody know that the
4 guy wasn't --

5 MS. GARCIA: Yes, he has a housing unit officer.

6 CHAIRMAN BURTON: So, he was in his cell every
7 day, so we can assume there was booze and drugs in the cell. So
8 the question in my mind would have been, unless the stuff was
9 left over from a prior occupant, how did the drugs get there?
10 Nobody seized upon that as to maybe try to ask anybody.

11 MS. GARCIA: Oh, yes. I'm sorry. The
12 Investigative Services Unit did conduct a review in terms of
13 interviewing his cell partner and people that he had been around
14 with to ascertain how the drugs were brought in, and we were not
15 able to determine.

16 CHAIRMAN BURTON: So, the "no" was, you didn't
17 find out, not that you didn't look?

18 MS. GARCIA: Right, sorry.

19 CHAIRMAN BURTON: Did you bring any family here?

20 MS. GARCIA: Yes, I did. I have my husband,
21 Omar; my 15-year-old child, Michael; my 12-year-old daughter,
22 Cerisse. And my 17-year-old has finals, and he'd rather be here
23 but he had to take care of his exams.

24 CHAIRMAN BURTON: You mean you didn't get him a
25 pass to come up?

26 MS. GARCIA: I could not get him a pass. I
27 believe in education.

28 CHAIRMAN BURTON: Do you have problems getting

1 people there because of the location? Is there like Brawley
2 incentive pay?

3 MS. GARCIA: You know, when the prison first
4 opened, there was problems in the recruitment. We have really
5 focused in the last five years --

6 CHAIRMAN BURTON: Because there's pretty high
7 unemployment in that area anyway; right?

8 MS. GARCIA: A lot of people didn't know how to
9 get a job through the state. It's a long process.

10 The last stats that we -- because we presented to
11 the Citizens Advisory group, almost 80 percent of our hires are
12 now local, and that's due to a concerted effort from Centinela
13 State Prison as well as Calipatria, that we do a lot of focused
14 recruitment. We go to Children's Fair. We start as young as
15 sixth grade, because we figure in the long run, they need to be
16 aware of the careers available.

17 CHAIRMAN BURTON: What's your lockdown situation?

18 MS. GARCIA: Right now?

19 CHAIRMAN BURTON: Generally.

20 MS. GARCIA: It varies.

21 CHAIRMAN BURTON: Are you locked down now?

22 MS. GARCIA: One of my facilities, Facility B, is
23 in a modified program. In December there was a murder. We were
24 locked down for three days, started bringing them up a little
25 bit at a time to ensure that there wouldn't be any
26 repercussions.

27 We tried to open them up last week, get the two
28 groups that were feuding, and it didn't go well. But we'll

1 start it again. We're meeting with the MAC of that facility,
2 and some of the men on the facility are now willing to talk and
3 find out what's going on.

4 All the other yards are open.

5 CHAIRMAN BURTON: Do you have any power outages
6 down there because of the air conditioning and all that?

7 MS. GARCIA: No.

8 CHAIRMAN BURTON: Self-generating?

9 MS. GARCIA: We have a self generator. We have a
10 back-up generator.

11 CHAIRMAN BURTON: Senator Johnson.

12 SENATOR JOHNSON: I just want to follow-up on
13 this question of the investigation that was done. And it may be
14 that you just didn't understand the Chairman's question, but I
15 understood the question clearly, and I understood your answer to
16 be no, implying that you didn't conduct an investigation.

17 MS. GARCIA: Any time there's an incident, we
18 interview the inmates in the housing units. We look to see when
19 they gathered. We talked to people that he hangs around with.
20 And we do a fact finding to find out how the drugs --

21 SENATOR JOHNSON: I guess that's not what I'm
22 looking for either. In fact, your answer -- and I have not done
23 other than vote to confirm every warden appointed by this
24 Governor -- but what went through my mind was, I'll be damned if
25 I'm going to vote to confirm someone that has that kind of
26 callous response to that.

27 Now, I'm asking the follow-up question because I
28 want to know if I misunderstood you. Let me tell you, what you

1 communicated to me was that we went through the motions.

2 But I didn't see anything that indicated that it
3 was upsetting to you that a human being in your prison died from
4 booze that he shouldn't have had and drugs that he shouldn't
5 have had.

6 MS. GARCIA: I'm sorry. . The loss of any death is
7 upsetting. It impacts not only the employees but the inmates as
8 well and me personally.

9 But we do review it. We try to determine what
10 led up to it, how we can learn from it.

11 So, if I appear callous, that's not the intent.

12 CHAIRMAN BURTON: Specifically, I think, Senator
13 Johnson, it was not an understanding, because specifically when
14 you found out that this person died of drugs and booze, what
15 steps were taken to see if you could find out? You found out
16 how he got the booze. They made it themselves, which kind of
17 asks the question, where did they make it themselves, but we'll
18 leave that for a minute. And then, how they got the drugs.

19 So, you did find out, his cell mate said -- which
20 should make Senator Polanco happy, double celling -- that the
21 booze was made in prison.

22 And then what did you do to find out about the
23 drugs? As I heard it, you contacted everybody that you know who
24 had contact with the deceased recently?

25 MS. GARCIA: The Investigative Services went out,
26 interviewed people, tried to ascertain what happened. We looked
27 at his medical files. We went to see if there was any other way
28 they could have had that controlled drug, and try to determine

1 how it happened. And we were not able to determine that.

2 CHAIRMAN BURTON: They went out, and like the
3 investigation was a thorough investigation, a cursory
4 investigation, or what?

5 MS. GARCIA: I believe it was a pretty thorough
6 investigation, Senator.

7 CHAIRMAN BURTON: Did you follow up? The guy
8 said, well, we made this; this is in-house whiskey. And you
9 followed up on that to find out where the still was, or what?

10 MS. GARCIA: It's not a still. What the inmates
11 do is, they get food items, and they put it either in the toilet
12 or in the trash can in paper bags, and they distill it with
13 their socks. So, it's a process that they do inside their cell.

14 CHAIRMAN BURTON: Distill it with what?

15 MS. GARCIA: Their socks.

16 CHAIRMAN BURTON: They ferment?

17 MS. GARCIA: They ferment it, yes.

18 We do take the alcohol issue serious. We do a
19 lot of cell searches to assure that we remove all kinds of
20 contraband, especially the alcohol.

21 CHAIRMAN BURTON: Who was the second person that
22 died?

23 MS. GARCIA: The second person was Gogan, and he
24 was allegedly murdered by his cell partner.

25 And when there is a murder at the institution,
26 The Imperial County Homicide Task Force is responsible to do the
27 investigation, and it's turned over to them. They come in and
28 take over the crime scene, and do the investigation. And then,

1 if necessary, they ask us to interview the inmates because they
2 determine whether or not it was by the death of another or
3 whether they're going to prosecute the cell partner.

4 CHAIRMAN BURTON: And?

5 MS. GARCIA: We're still waiting for the results.

6 CHAIRMAN BURTON: When did the death happen?

7 MS. GARCIA: June of last year.

8 CHAIRMAN BURTON: So, the Imperial County
9 Sheriff, I guess, or the police?

10 MS. GARCIA: It's Imperial -- it's a task force.
11 It's made up of a variety of people.

12 CHAIRMAN BURTON: County and city.

13 MS. GARCIA: Uh-huh.

14 CHAIRMAN BURTON: And they're still trying to
15 figure out who the perpetrator is?

16 MS. GARCIA: Well, the assumption is, the
17 perpetrator is the cell partner, but they have to submit their
18 report to whether or not we're going to charge him with a
19 homicide.

20 CHAIRMAN BURTON: As opposed to?

21 MS. GARCIA: The DA is the one who normally files
22 the charges.

23 CHAIRMAN BURTON: I know that. So, there was a
24 murder, I guess, a year ago. They have determined, or I don't
25 know if you arrest a guy in jail, but they either arrest him or
26 figure out it's his cell mate. And the DA's trying to figure
27 out whether or not they're going to charge Murder One, Murder
28 Two, manslaughter, or what?

1 MR. TRISTAN: Normally that's what happens,
2 Senator.

3 In all of our institutions, outside
4 investigators, local law enforcement, does the investigation and
5 then refers it over to the district attorney if they feel that
6 they have whatever level of charge they want to charge him
7 with. In conjunction with the coroner's reports and all the
8 other -- and the autopsy, and those kinds of investigations.

9 CHAIRMAN BURTON: And the prison, I guess, can't,
10 or shouldn't -- and this is more idle curiosity than dealing
11 with your confirmation -- but while it's being handled by the
12 cops, so to speak, the prison itself, can they conduct a
13 parallel investigation to see whether there should be, quote,
14 "disciplinary action" against somebody, or they're supposed to
15 just back off?

16 MR. TRISTAN: We can do an administrative
17 investigation if we think there's staff misconduct involved.

18 CHAIRMAN BURTON: No, not staff. I'm talking
19 about, assumingly it wasn't a guard.

20 MR. TRISTAN: A parallel criminal investigation
21 we typically do not do.

22 CHAIRMAN BURTON: And not even an administrative
23 one to see whether they should lose visiting privileges or
24 something?

25 Because if you start asking questions, it could
26 compromise the case, I guess.

27 MR. TRISTAN: Absolutely, Senator.

28 CHAIRMAN BURTON: Senator Johnson.

1 SENATOR JOHNSON: No more questions.

2 CHAIRMAN BURTON: Senator Knight.

3 SENATOR KNIGHT: You know, I think everybody is
4 getting a little confused over here with your answers on the
5 investigation.

6 But we talked in the office, and I wasn't
7 confused at all. I understood that you had an investigation.

8 MS. GARCIA: Yes.

9 SENATOR KNIGHT: But you tend to stay away from
10 the word investigation, and now you've brought in another
11 organization that does the investigation.

12 But you did do an investigation.

13 MS. GARCIA: Yes, sir.

14 SENATOR KNIGHT: And I don't know why we're so
15 reluctant to say we did an investigation.

16 MS. GARCIA: I just misunderstood. I'm sorry.

17 CHAIRMAN BURTON: Senator Karnette.

18 SENATOR KARNETTE: I have a question related to
19 the curriculum that is set up. As Senator Burton mentioned, why
20 a teacher, not a counselor. And you were talking about the
21 curriculum that they get, and anger management.

22 Who determines what that curriculum is? Who
23 decides what happens in a prison, what the teachers teach? How
24 does that happen? Who decides and changes it? I'm sure changes
25 are necessary.

26 MR. TRISTAN: Yes, Senator. The curriculum at an
27 institution is decided upon by the Education Department within
28 Institutions Division. They develop the statewide curriculum.

1 Years ago, when we were looking at the
2 curriculum, the cognitive skills model was instituted, so that
3 in every class that we were teaching in the Department of
4 Corrections, we were dealing with cognitive skills, and we were
5 dealing with ethics and life skills as we were teaching reading
6 and basic education.

7 That curriculum is typically reviewed and
8 improved on. There's Curriculum Committees that meet with
9 representatives from the institution. We have outside people
10 come in. We have a committee that is comprised of educators and
11 former educators from the community that come in and provide us
12 counsel. They go out to our prisons, and they take a look at
13 our classrooms. They take a look at our curriculum. They take
14 a look to see whether or not we're effective in teaching inmates
15 the basic reading, writing, math skills.

16 We have also have Trade Advisory Committee that
17 advises us on which trades are the best trades for employability
18 for inmates. And so, we modify our trades programs and update
19 our trades program, usually on an annual basis to try to keep up
20 with the job markets so that the inmates, when they parole, will
21 have more employable skills.

22 Those are some of the things that we try to do to
23 stay up with the community standards in education.

24 SENATOR KARNETTE: The counselor, to get to the
25 question about a counselor. Now, what about a person who has a
26 credential in counseling? That's not the same, I don't think.
27 I think Senator Burton meant a different type of counselor.

28 Do you use counselors that have credentials in

1 counseling, or what kind of counselors?

2 MR. TRISTAN: Our counselors, as the Warden was
3 explaining, are more case workers that process the case, in
4 terms of the terms of the confinement, the sentence that the
5 inmate got, the social factors, social history, their needs.

6 SENATOR KARNETTE: What kind of training do they
7 have? What kind of degree?

8 MR. TRISTAN: Usually they have a minimum of an
9 AA, and some two years of experience in working with --

10 SENATOR KARNETTE: So actually, the teacher has
11 more academic training.

12 MR. TRISTAN: Absolutely. They have to be
13 credentialed.

14 CHAIRMAN BURTON: Witnesses in support. We
15 already have Brother Mabry on record in support.

16 Are you in support?

17 MS. AGUILERA-MARRERO: Yes. Actually, this will
18 be the last time I come up. I'm also going to speak on behalf
19 of the other two as well as Ms. Garcia so I don't have to take
20 up any more of your time. I know that we're pressed for it.

21 Suzanne Aguilera-Marrero, Sam for short, with the
22 Chicano Correctional Workers Association, CCWA. We're in full
23 support of Silvia Garcia's appointment to Warden.

24 She has currently been doing the job for the last
25 two years. If you've ever been to --

26 SENATOR JOHNSON: Could you slow down.

27 MS. AGUILERA-MARRERO: I'm sorry.

28 She's been currently working for the last two

1 years in the position of Warden down at Calipat. If you've ever
2 been down there, and I heard you talk and say that you have
3 been, it's not somewhere where everyone wants to go. However,
4 Ms. Garcia has made a commitment to the job to do her best, and
5 she has.

6 CHAIRMAN BURTON: You're in support.

7 MS. AGUILERA-MARRERO: Yes, we're in total
8 support.

9 CHAIRMAN BURTON: I have one question. You are
10 with whom?

11 MS. AGUILERA-MARRERO: The Chicano Correctional
12 Workers Association.

13 CHAIRMAN BURTON: That Association is made up of?

14 MS. AGUILERA-MARRERO: Employees with the State
15 of California for the Department of Corrections, professional.

16 CHAIRMAN BURTON: I understand that, but which?

17 MS. AGUILERA-MARRERO: Correctional officers.
18 I'm a Correctional Counselor II.

19 CHAIRMAN BURTON: We want to get you into the
20 pre-release program.

21 MS. AGUILERA-MARRERO: Okay, thank you.

22 [Laughter.]

23 CHAIRMAN BURTON: Next, please.

24 MR. POLK: Good afternoon, Senators. I'm Lee
25 Polk, Associate Warden at Pelican Bay State Prison. I'm here to
26 speak on behalf Silvia, as Acting Warden of Calipatria State
27 Prison.

28 From May, 1998 to July, 2002, I had the pleasure

1 working with Ms. Garcia. During that period of time, I was the
2 Supervisor of Correctional Education Programs. I supervised the
3 educational programs at the institution and the pre-release
4 program.

5 She was very supportive of my effort of trying to
6 turn around a very dysfunctional educational program. The first
7 thing I noticed, she was very -- she set very high standards for
8 work performance for herself and her subordinates. She
9 supported me when I needed to make some tough decisions to
10 improve the educational programs, and she was also very equally
11 tough on me on my decisions that weren't quite that great.

12 In addition, with her stern hand, she would give
13 me direction on how to correct my old thought out plans and
14 necessary resources to get the job done. As time went on, she
15 gained confidence in my ability to do my job and allowed me to
16 be a part of her management team. I got to watch her and the
17 management team develop action plans to improve the morale,
18 develop systems to improve security, checks and balances for
19 those security systems, to set expectations for employees'
20 performance, to schedule regularly the regular meetings for the
21 MAC Committee to hear inmate concerns, and to improve the
22 institutional relationship with the community through its
23 Citizen Advisory Committee.

24 Cal became a place where most employees enjoyed
25 the privilege of coming to work everyday. Also, the institution
26 frequently does well on security audits, information system
27 audits, and peer audits. Calipatria has become a pride of the
28 Imperial Valley.

1 Ms. Garcia has accomplished these things, along
2 with being a loving wife and a very proud mother of three
3 beautiful children. I think the state would benefit greatly by
4 appointing Ms. Garcia as the Warden at Calipatria State Prison.
5 She has worked very, very hard to be a good Warden.

6 CHAIRMAN BURTON: Thank you.

7 MS. TUTT: First of all, I'd like to say thank
8 you for giving me this opportunity. My name is Antoinette Tutt.
9 I'm an Associate Warden at Ironwood State Prison.

10 I worked for Silvia Garcia for four years at
11 Calipatria as a facility captain. Having a Level IV institution
12 and having a Level IV yard is very difficult because of the
13 level of inmates that we deal with. But I found Ms. Garcia to
14 be a leader, a task master, and a forthright individual. Didn't
15 always agree with her. I took a couple of write-ups from her.
16 I was angry about it, but she always gave me an open forum to
17 express my opinion. She also gave me the empowerment to do my
18 job.

19 I'm asking the Committee today to empower her.
20 This woman has worked three years out there at the institution,
21 holding it down. What I got of it when I was there was her
22 integrity. Ms. Garcia doesn't carry on just her own integrity.
23 She carries on the mission of the Department of Corrections.
24 She separates that from running Calipatria. She speaks to her
25 employees that we are ambassadors to carry on the good will of
26 the safety and security of the public.

27 As a taxpayer, I think she has given me my
28 money's worth. She has given me my money's worth in the

1 operation and the fiduciary handling of the institution. She is
2 a trainer. She has been a mentor. She has supported me going
3 to school up here at Sacramento State University when I was a
4 facility captain at Calipat. That meant I had to fly --

5 CHAIRMAN BURTON: I was going to say, that's a
6 hell of a commute.

7 MS. TUTT: It was a hell of a commute.

8 She supported me by allowing me to fly back and
9 forth twice a week to go to school. Unfortunately, I didn't
10 finish because I got promoted and went to Ironwood. But
11 Ms. Garcia always took the time to check to see how I'm doing,
12 and she developed an MSW Program down there at Calipat.

13 It's kind of hard just to sit back and not say
14 anything, because I traveled this morning four hours from
15 Blythe, caught a plane, spent quite bit of money to get here to
16 say how much she meant to me while I was a leader down there at
17 Calipat.

18 Have there been some problems? Yes. But she is
19 one of the wardens that will take it head-on, hold the bull by
20 the horns, and see that this institution goes forward.

21 I am in support of her as a Warden. I thank her
22 for her support for me taking on the presidency down at Blythe
23 as President of the Child Abuse Council. She said, since you're
24 a social worker, do social work besides your duty as a
25 correctional professional.

26 I'd like to thank this Committee for the
27 opportunity to speak today. And I do support Ms. Garcia.

28 CHAIRMAN BURTON: Thank you.

1 MS. BIRD: Honorable Chairman, Committee, I'm
2 Cayenne Bird, Director of the UNION, United for No Injustice,
3 Oppression or Neglect, 6,000 humanitarians.

4 We don't really believe that prisons are a
5 solution to crime. In fact, we believe quite the opposite, but
6 I testified in 1998 at the warden confirmation hearing of Larry
7 Small in opposition. At that time, we were getting suicide
8 reports.

9 CHAIRMAN BURTON: Are you in support?

10 MS. BIRD: Yes, support.

11 She's come a long way. Complaints have fallen.
12 We had guard-run drug rings at that time. We haven't heard any
13 of that. I personally think the guards need see-through lunch
14 pails, and they need before and after shift changes, because
15 when there's drugs in prison, it's guard-related.

16 CHAIRMAN BURTON: You're in support?

17 MS. BIRD: Very much so.

18 She's very accessible, and complaints have fallen
19 80 percent since she's been there.

20 CHAIRMAN BURTON: High praise indeed coming from
21 you.

22 MS. BIRD: Yes.

23 CHAIRMAN BURTON: Thank you very much.

24 Next.

25 MR. MITCHELL: Mr. Burton, my name is John
26 Mitchell. I'm the Correctional Food Manager at Calipatria State
27 Prison.

28 I'm here today as a representative of the

1 Calipatria State Prison Employees Association.

2 We just want to go on record as being in support
3 of Ms. Garcia and her appointment and confirmation. We've found
4 working with Ms. Garcia over the years, we've found that she is
5 a compassionate woman. As we bring issues to her regarding
6 other employees, she has opened her doors to us. She's always
7 had an open door to us. She has admonished us to always bring
8 programs to her that will treat all employees on an equal basis.

9 CHAIRMAN BURTON: You're here in support?

10 MR. MITCHELL: I am in support.

11 CHAIRMAN BURTON: Thank you, sir.

12 Next.

13 MS. GALINDO: Hello, Mr. Burton.

14 I am from Holtville, which is in the Imperial
15 Valley also. My name --

16 CHAIRMAN BURTON: The birthplace of George E.
17 Brown, Jr. Carrot capital of the world.

18 MS. GALINDO: You betcha.

19 My name is Norma Sierra Galindo. I have served
20 as a member of the Citizens Advisory Committee as appointed by
21 Supervisor Wally Linegruber since a year ago.

22 I am here in support of Warden Garcia, and I'd
23 basically like to tell you that I love the see the democratic
24 process working here, but it troubles me to see the tail wanting
25 to wag the dog so much.

26 I think that with Ms. Garcia, what I have
27 personally seen, is a person who's going to do something, rather
28 than not do something at all. And it reminds me of my dad

1 saying, do something even if it's wrong and then take
2 responsibility for it.

3 She is accessible. She is very high profile in
4 the entire community, and we're looking at five big towns.
5 We're looking at places where she doesn't flaunt who she is, but
6 anybody who knows who she is, knows that she's there. She's
7 very involved. She answers questions from the community.
8 Answers telephone calls. Always has an explanation, not always
9 the explanation we like to hear. She is a professional, and her
10 background, bilingual and bicultural, are truly an asset to that
11 particular population.

12 CHAIRMAN BURTON: Thank you.

13 MS. GALINDO: I thank you more.

14 CHAIRMAN BURTON: Thank you.

15 MS. SWETICH: Hello. My name is Lieutenant
16 Thelma Swetich. I'm the Public Information Officer and
17 administrative assistant.

18 I've been at Calipatria State Prison since
19 activation. I've worked with four previous wardens, and I think
20 Silvia Garcia is well-qualified, and she displays exceptional
21 leadership skills. She has an open door policy. She makes
22 sound decisions and has great management skills.

23 Also I'd like to say that when a death occurs at
24 the prison, besides the investigative process that we do, along
25 with that, the other agencies, our Security Investigations team,
26 helps get all the evidence together with that team, and then
27 it's up to the DA to prosecute. And since we're such a small
28 community, it takes a long time to get a prosecution, or for

1 them to go up to have a case heard.

2 Also, when the family members call regarding the
3 death, I take the first call. I talk to the family members
4 after they've already been notified. They call several times.
5 Ms. Garcia talks to all the family members because, obviously,
6 they're distraught. It's a sensitive issue.

7 And we have, on one of the deaths that you were
8 talking about, one of the -- the father had a -- he has a
9 disability, and he doesn't remember that he's talked to her.
10 And she handles it very well. She talks to him every time. And
11 he's very appreciative.

12 I just think that I'm in support for her. I
13 think she'd make a great warden, and she's proved that for the
14 last two years.

15 Thank you.

16 CHAIRMAN BURTON: Thank you.

17 MS. GOODMAN: Hello again. My name is Mari
18 Goodman. I'm representing the membership over at Ms. Garcia's
19 facility. I'm here to speak on behalf of her confirmation.

20 We toured the facility, met with the membership
21 who were very favorable to her leadership, which is something
22 that they spoke highly of. We met with her and the management
23 team and found them approachable, as the membership said that
24 they were.

25 We are in favor of this confirmation. We wish
26 her a lot of luck.

27 CHAIRMAN BURTON: Thank you.

28 Next.

1 MR. SANTANA: Good afternoon, Senator. My name
2 is Jorge Santana. I'm the Chapter President of the Chicano
3 Correctional Workers Association. I'm also a sergeant at
4 Calipatria State Prison. I've been there for four-and-a-half
5 years.

6 I'm in support of Ms. Garcia, Ms. Garcia to be a
7 Warden. I believe she's highly qualified. She offers something
8 to the institution that we needed, stability.

9 I heard a few people before me saying that they
10 had been reprimanded in one way or another by Ms. Garcia. And I
11 was placed under investigation by Ms. Garcia, so I'm glad she
12 did -- I mean, not really glad, but it cleared my name. Now,
13 whenever people try to challenge my integrity or something, I
14 say, bring it on. She's the one that helped me realize that.

15 That's really what I have to add.

16 CHAIRMAN BURTON: Thank you, sir.

17 Next.

18 MR. PERAZA: Good afternoon. My name is Octavio
19 Peraza. I'm a Community Resources Manager at Calipatria State
20 Prison.

21 I'm here in support of Silvia Garcia as Warden.
22 I have worked with Ms. Garcia since 1998, both as a Chief Deputy
23 Warden and as Warden. I am responsible to be the liaison
24 between the administration office there at Calipatria State
25 Prison and the community.

26 I will say that Ms. Garcia does keep me busy.
27 She's a hard task master. She expects a lot. Last year, she
28 wanted us to start a program where we would introduce

1 educational informative tours for school children. She said do
2 it. One year later, we have given over 50 tours to over 1,000
3 students in the Imperial Valley.

4 She is pushing for a youth diversion program.
5 Her belief is that education is foremost. She believes that
6 children should have every opportunity to learn and to stay out
7 of prison. That's a program that we're working on.

8 She believes in school partnerships. We are
9 working with different schools.

10 Without touching on other things that others have
11 already covered, I'd just like to say I am in support of
12 Ms. Garcia.

13 CHAIRMAN BURTON: Thank you very much.

14 Next, sir.

15 MR. DIN: Good afternoon. My name is Ray Din,
16 D-i-n. I'm here in support of Silvia Garcia.

17 I'm a life-long resident of Imperial Valley.
18 I've been there all my life, my family also. And I also worked
19 for Silvia Garcia for the last eight years. I'm a Correctional
20 Counselor I, paper pusher.

21 CHAIRMAN BURTON: All right, we got you. What do
22 you do.

23 [Laughter.]

24 CHAIRMAN BURTON: I want you working on this pre-
25 release. Tell me what you do.

26 MR. DIN: Well, I have open door policy with my
27 inmates. We're supposed to have a minimum of four hours a week
28 of open door policy, or open line with the inmates, where we can

1 talk with them. My door is open, one-on-one, all the day long.

2 I stay in my building as much as possible. What
3 I try to do is, if an inmate has any kind of question, anything,
4 even though it's not parts of my work load, I will try to answer
5 and direct him to where he can get the information. And we talk
6 about self-help and stuff.

7 CHAIRMAN BURTON: What's your definition of case
8 management then?

9 MR. DIN: Case management?

10 CHAIRMAN BURTON: She's the one that described
11 what you people did. I didn't. Or maybe it was the warden
12 before. Maybe it's the one last week.

13 [Laughter.]

14 MR. DIN: Basically, when an inmate comes into
15 the system, we calculate their scores. We see what they're in
16 here for. We try to put them in programs that's going to help
17 them better, to better them. If their academic levels are
18 really low, we try to put them in an educational program that's
19 going to help them.

20 CHAIRMAN BURTON: And you do stick with them as
21 far as counseling?

22 MR. DIN: Yes, as long as they're in my building.

23 CHAIRMAN BURTON: We're going to retract for the
24 record that paper pushing.

25 MR. DIN: Okay, great.

26 [Laughter.]

27 CHAIRMAN BURTON: But you're not, counselors are
28 not, involved in any part of the pre-release education or

1 indoctrination?

2 MR. DIN: No, I'm not part of that.

3 CHAIRMAN BURTON: Don't you think that it makes
4 sense?

5 MR. DIN: I think that we could probably play a
6 role and be an effective part of that. I truly do.

7 We talked about what does it take to be a
8 correctional counselor. Well, there's minimal. They have
9 minimum qualifications to get in. You know, I've attended
10 classes, I've taken courses and completed courses at the
11 University of Purdue.

12 CHAIRMAN BURTON: Is there anything you have to
13 have, a certain degree, any social work, whatever?

14 MR. DIN: No, but you know what? I've been in
15 Department of Corrections for only eight years, but my life
16 didn't start eight years ago. I was involved with other
17 things.

18 And I think that when they look at your
19 application for this position, they look at the whole picture.
20 They see what you bring to the table.

21 CHAIRMAN BURTON: So, there's no minimum
22 educational requirements?

23 MR. DIN: Associate of Arts, with four years of
24 service as a correctional officer.

25 CHAIRMAN BURTON: Service as a correctional
26 officer can make you a counselor?

27 MR. DIN: No, four years, and two years of
28 college, completed courses.

1 CHAIRMAN BURTON: No necessary training in,
2 quote, "counseling" or something?

3 MR. DIN: Well, when you're working four years on
4 the line, you get a lot of experience.

5 CHAIRMAN BURTON: I understand that. No, I'm
6 taking up time, and it's idle curiosity.

7 MR. DIN: Sir and panel, I'm here in support of
8 Silvia Garcia.

9 And also when I came to the Department, what I
10 was doing was, where do you work? I work for the Department of
11 Corrections. What do you do? Or I tell them something else. I
12 wasn't really proud of the job because we had a lot of
13 negativity in the small community. When you bring a maximum
14 security prison, where a lot of people are coming through the
15 valley to visit, to be incarcerated, or what have you, has a lot
16 of negativity to the valley.

17 But she's turned that around. I'm very proud to
18 say I work for the Department of Corrections as a correctional
19 officer.

20 CHAIRMAN BURTON: Thank you.

21 Next.

22 MR. COTTIER: I'm a little nervous. This is the
23 first time I've done this.

24 My name is Charles Cottier. I'm retired from the
25 Department of Corrections. I labored diligently in the
26 vineyards for 38 years.

27 I supervised Ms. Garcia for a period of time. I
28 found her to be a hard working individual who had a thirst for

1 knowledge, and the knowledge went beyond just asking
2 questions. When she asked me how something worked, where do I
3 find the written word that makes it right?

4 So, she consistently makes good decisions.
5 She's a very assertive individual. Believes that everything
6 should be done in accordance with the operational plans and
7 procedures.

8 I found her to be very fair with inmates when she
9 worked for me. I'm a little disappointed in her response to you
10 about the investigation thing there, because she didn't tell you
11 that administratively, they would have put their Security Unit
12 immediately to work, and those that were looked to be involved
13 would be removed from the general population, hoping to gain
14 some security for those other folks, and that they have an
15 ongoing program in terms of searching and ferreting drugs and
16 illicit activities. It's not really a matter, gee, somebody got
17 killed. Let's call in the county.

18 CHAIRMAN BURTON: You're in support?

19 MR. COTTIER: Yes, I am.

20 CHAIRMAN BURTON: Thank you, sir.

21 Other witnesses in support.

22 Witnesses in opposition.

23 MR. TATUM: Hello. I'm Richard Tatum, President
24 of the California Correctional Supervisors Organization.

25 Firstly, I'd like to apologize for the lateness
26 of the information I provided this Committee. I did not receive
27 that information and all the things that I needed to do. As I
28 indicated many times, we have -- really take this as a serious

1 situation here.

2 CHAIRMAN BURTON: So, you didn't receive the
3 information until shortly before you got up here?

4 MR. TATUM: Yes, sir, that's true. We just got
5 the information. And with it, we do know that a lot of the
6 information has been submitted to the Department in regard to
7 grievances. We documented that and submitted that in this
8 package that we provided to you with it.

9 In reaching this, and appearing before this
10 Committee, I will say that this is -- in ten years, I've been
11 the President of this organization from the day that it
12 started. And this is the first time that our organization has
13 ever opposed a warden. And not to degrade Ms. Garcia, because I
14 think she's a very nice person, and that isn't what we're saying
15 here.

16 We're saying that she made some bad decisions,
17 okay, on dealing with things that we feel got two inmates not
18 specifically killed, but could have made -- resulted in possibly
19 saving of their life. And you know, we have a real problem with
20 that, sir.

21 CHAIRMAN BURTON: If you would have had the
22 staffing that you wanted, five minutes would have been cut to
23 what?

24 MR. TATUM: Probably just a couple of minutes.
25 And the reason is, if I can explain that is, this is, as many of
26 the people have said there, this is a Level IV facility, which
27 I've said in many of these hearings that it's where the bad guys
28 are. They put them there because they're a lot of -- they're

1 not the best inmates in the world there.

2 One of the policies and the procedures of these
3 type of facilities does not allow staff to open these doors,
4 okay, without a supervisor being there. In this case, the
5 cross-coverage policy of the Department of Corrections -- and
6 what I speak to in cross-coverage is the fact that when you have
7 a position assigned to a position, and you do not fill that
8 position and it's vacant, a sergeant from a different area has
9 to come forward, and he has to cover maybe one or two other
10 positions that he has.

11 In this situation, in both these situations, the
12 supervisors had to respond from a different area before that
13 door -- they do have medical emergencies with it, and we
14 certainly understand that. But what happened in this situation
15 is, the supervisors had to come over from a different area and
16 open the cell door. Because of that, it delayed the emergency
17 response in both issues with it.

18 And if you look at the incident report --

19 CHAIRMAN BURTON: The first one you said it
20 probably would have been from five, to two to three?

21 MR. TATUM: Possibly two or three minutes, yes.
22 Two minutes.

23 As we know, in regards to CPR and other things --

24 CHAIRMAN BURTON: I understand.

25 And then on the, you could probably call it a
26 homicide?

27 MR. TATUM: Yes, I would say it's a homicide when
28 there's two people locked in a cell. I would say with it, one's

1 dead. I would say you've got a pretty good suspect there.

2 CHAIRMAN BURTON: You probably ought to get ahold
3 of the DA down in Imperial County.

4 MR. TATUM: Basically, we as an organization feel
5 that Ms. Garcia's policies in regard to the cross-coverage of
6 these positions may not be the reason that these inmates died,
7 but they contributed to the fact that possibly on both of them.

8 If today she would have read her report, she
9 would have saw that they did find marijuana in there with it,
10 marijuana in that guy's cell. You talk about drugs. They found
11 marijuana with it. And that is related directly into her
12 report.

13 CHAIRMAN BURTON: It could well be a first if
14 somebody died of smoking a joint.

15 MR. TATUM: I would think that, and I understand
16 that.

17 CHAIRMAN BURTON: I think it was some other drugs
18 that probably didn't mix with cabbage and dirty socks.

19 The problem is, what? That she understaffed
20 supervisors, or doesn't fill slots, or what?

21 MR. TATUM: That's exactly it, what happened with
22 it when the position, because of the Department's policy now, at
23 the 4.5 vacancy rate of it. That means they allow an
24 institution to be 4.5 positions vacant of what they were given.

25 CHAIRMAN BURTON: Four point five supervisorial?

26 MR. TATUM: Yes.

27 CHAIRMAN BURTON: And a supervisor is what grade
28 level?

1 MR. TATUM: Sergeant and above.

2 CHAIRMAN BURTON: And because they are
3 supervisory, are they covered by collective bargaining or
4 no?

5 MR. TATUM: No, sir, they're not.

6 CHAIRMAN BURTON: Okay.

7 MR. TATUM: Basically, though, what we're
8 indicating here, wind this up with it, I have some other folks
9 here that want to speak, but basically, the lack of response
10 from her when we filed the grievances with it. She didn't
11 appear to care with it.

12 CHAIRMAN BURTON: You filed a grievance?

13 MR. TATUM: Yes, my chapter people filed
14 grievances.

15 CHAIRMAN BURTON: Saying you're under staffed, or
16 she's cross --

17 MR. TATUM: Yes, she has cross-coverage, or in
18 her situation, leaving vacancies.

19 CHAIRMAN BURTON: Cross-coverage means what?

20 MR. TATUM: Cross-coverage basically means that
21 when you have a position in, say, two units that you have. One
22 of those positions calls in sick. You do not fill that
23 position, so that sergeant on the other unit comes over and
24 works that unit.

25 CHAIRMAN BURTON: Would you fill it by
26 temporarily appointing --

27 MR. TATUM: No, sir. All they have to do is hire
28 an overtime position on those, and then you'd have that position

1 filled.

2 CHAIRMAN BURTON: You mean bring in somebody that
3 just got off work and pay him time-and-a-half?

4 MR. TATUM: Yes, sir.

5 With that, like I say, I think that --

6 CHAIRMAN BURTON: What if your budget doesn't
7 provide for that?

8 MR. TATUM: Well, that's a problem. That's a
9 problem for her and the Department.

10 But I would think that, number one, if you had
11 two inmates -- possibly deaths of two inmates, and the
12 possibility of a wrongful death suit by those inmates' people,
13 that I would take another look at that cross-coverage situation.

14 SENATOR JOHNSON: Wait, wait, wait.

15 Are you alleging that in these two incidents,
16 there were staff people missing, and that that's responsible?
17 Or are you just here trying to seize on the fact that a couple
18 of people died to raise a bitch that you have independent of
19 that?

20 MR. TATUM: No, sir. These are documented in
21 reports that I provided to you.

22 SENATOR JOHNSON: That's not the question I
23 asked.

24 Are you saying that that was a factor in either
25 of these deaths?

26 MR. TATUM: I said it could be a factor.

27 SENATOR JOHNSON: No. If it's documented --

28 MR. TATUM: Yes.

1 SENATOR JOHNSON: -- and there are records of
2 whether there were a sergeant coming in from another unit or
3 something, you know, is there any evidence at all? Are you
4 alleging that in the two deaths that was a factor?

5 Because if you're not, then what you're doing is
6 trying on to take advantage of the two deaths to raise hell
7 about something you're unhappy with.

8 MR. TATUM: That's not true, sir.

9 What I'm saying is, the fact that these positions
10 were run vacant. We feel that it was a contributing factor to
11 these because the staff could not get over there in time, okay,
12 to possibly with it [sic]. The inmates might have died anyway
13 in both situations with it.

14 We're not saying that with it, but her policy in
15 not filling these positions, okay, could have contributed to do
16 the fact that these inmates were not treated in a faster
17 manner.

18 SENATOR JOHNSON: Not to prolong this, but surely
19 these haven't been the only medical emergencies in the prison
20 during her tenure. There have been other medical emergencies;
21 right?

22 MR. TATUM: Sure. Medical emergencies happen on
23 a regular basis.

24 SENATOR JOHNSON: Someone didn't necessarily die
25 in these other ones. What kind of response time did they have
26 typically?

27 MR. TATUM: Basically it takes five, depending
28 upon the -- what the nature is, the size of the institution,

1 where they're located. How long it takes that supervisor to get
2 over there to supervise the opening of that door.

3 CHAIRMAN BURTON: So, are there other witnesses
4 in opposition?

5 MR. TATUM: Thank you.

6 CHAIRMAN BURTON: The gist seems to be that she
7 is not filling slots, vacancies in supervisory personnel. And
8 there could be, or would be, or were attendant potential
9 problems as a result of that, as I understand it.

10 MR. BRADEN: My name is Bill Braden. I'm a
11 retired correctional lieutenant from Deuel Vocational
12 Institution, currently working for CCSO.

13 The President just testified to the vacancies
14 that are going on in that particular institution. That
15 institution's chapter, the Chapter President called me and
16 informed me that the vacancies were becoming a problem.

17 CHAIRMAN BURTON: Are there vacancies there in
18 the line guys?

19 MR. BRADEN: Not the line guards, but with the
20 supervision, the supervisors.

21 CHAIRMAN BURTON: In other words, there are no
22 vacancies there anywhere in that prison? They're up to their
23 table of organization in equipment, except for supervisory
24 people? They're a full complement of the counselors, the
25 teachers, the line guards, the kitchen personnel, the clerical?

26 MR. BRADEN: I cannot speak to that, sir. I can
27 only speak to the supervisors.

28 Based on those complaints, I wrote Warden Garcia

1 and requested some documents. She, in turn, eventually gave me
2 those documents under Government Code 6250, request for public
3 documents.

4 Having reviewed those documents, I've come to a
5 couple conclusions. One of them was that she was well beyond
6 the 4.9 percent mandate that the Department's under for
7 vacancies for supervisors. The percentage was, as I recall, was
8 9.8 for lieutenants, and 6.1 for sergeants.

9 We feel as an organization that this can create
10 some real problems in both security and safety of staff and
11 inmates.

12 Reviewing the Fair Labor Standards Act sheets,
13 which are the sign-in sheets, I noticed an inordinate amount of
14 cross-covering, the very issue which you were talking about a
15 minute ago.

16 SENATOR KARNETTE: May I ask a question.

17 The budget, can you use the budget for
18 supervisors for filling other positions?

19 MS. GARCIA: We didn't have any vacancies, true
20 vacancies for sergeants. What we had was about four
21 correctional sergeants who were out on extended sick leave. So,
22 we couldn't technically fill behind them until we were told that
23 they were no longer coming back to work.

24 What we tried to do was to fill in with actors,
25 officers who met the minimum qualifications to act. At one
26 point we didn't have any takers to fill the -- to assume the
27 acting position. When it became that difficult, then I put a
28 couple of the sergeants positions in a blanket and hired behind

1 them, limited term, in an effort to minimize the vacancies.

2 SENATOR KARNETTE: So, it wasn't a budgetary
3 thing, where you cut down on one to implement another area;
4 okay. You 'explained it.

5 MR. BRADEN: Basically, I don't want to waste you
6 guys' time.

7 CCSO has been monitoring the institutions, and I
8 will continue to audit them, in hopes that they will at least
9 meet their 4.9 percent mandate of vacancies for supervisors and
10 managers.

11 We have a position on that, sir. And the
12 position that it is dangerous. And having worked in those
13 institutions, I haven't worked any particular institution, for
14 31 years as a supervisor, I've been called upon many a time to
15 cross-cover, not just one position, but maybe two. It puts an
16 additional burden on those people to try to maintain the
17 institution.

18 CHAIRMAN BURTON: Let me ask a question.

19 Only the supervisor was trained, are trained, in
20 CPR, or are the line guards trained in CPR?

21 MR. BRADEN: Having been out of the institution
22 for two years, it may be that supervisors are also trained in
23 CPR.

24 CHAIRMAN BURTON: Then what good -- I'm just
25 trying to get this thing. I can understand it's staffing
26 standards. I understand that real well, strong support. I
27 voted against taking firemen off of diesel locomotives. I
28 believe three in the cockpit for airline pilots. So, I believe

1 in safety staffing standards.

2 But the point was made that the two or three
3 minutes, you know, give or take, where it took the supervisor to
4 get over to the cell where the person was going through seizure,
5 or whatever, with drugs and booze, you know, and that the CPR
6 would be quick.

7 And then it just dawned on me as we're talking
8 that I would assume there was like a line guard, or whatever you
9 call them, that was close there, that was the one that said some
10 inmate's down, I would assume that there was a guard there that
11 probably saw it first. Then they call a supervisor.

12 So, I don't know what difference it would have
13 made if the supervisor was there to watch the guard give CPR, or
14 what the supervisor really would have done?

15 MR. BRADEN: Well, as I understand it --

16 CHAIRMAN BURTON: And I believe you should have
17 the ratios, but I'm just wondering, what would the sup. do? The
18 first person on the scene would be doing whatever.

19 MR. BRADEN: As I understand it, Senator, the
20 supervisor, a sergeant in this particular case, has the key to
21 open the door.

22 CHAIRMAN BURTON: The other guy can't open it?

23 MR. BRADEN: The other guy's standing in front of
24 it, can't do anything. Our contention is --

25 CHAIRMAN BURTON: That explains it. Thank you.

26 MR. BRADEN: That's about all I have. Thank you
27 very much.

28 MR. BOREM: It's been a long day, I know. I'm

1 kind of nervous, so you have to forgive me.

2 CHAIRMAN BURTON: You are or not?

3 MR. BOREM: I am nervous, very nervous.

4 CHAIRMAN BURTON: That's how they all get me if
5 they say they're nervous. Then you've got to be gentle.
6 Otherwise, hurry up.

7 MR. BOREM: That's right. Hurry up, damn it,
8 huh?

9 CHAIRMAN BURTON: Go ahead.

10 MR. BOREM: I am the CCSO Chapter President at
11 Calipatria State Prison.

12 CHAIRMAN BURTON: Your name?

13 MR. BOREM: I'm sorry. My name is Tim Borem. I
14 hold the rank of Correctional Sergeant.

15 When we found out Ms. Garcia was going up for
16 appointment, I polled all of the correctional supervisors that
17 belong to CCSO -- we have about 60 of them -- with the exception
18 of three I could not get ahold of, and it was overwhelming not
19 to support Ms. Garcia.

20 There's a lot of reasons. I have to refer to my
21 notes here. Something I learned 14 years ago, when I attended
22 the basic Correctional Training Center was, your word is your
23 bond. That means if you tell somebody you're going to do
24 something, you're expected to do it. If you can't do it, you
25 should get back at them and say, something came up; we cannot
26 do that. And that still holds true today with supervisors.

27 The supervisors work shoulder to shoulder with
28 the inmates. We have killers; we have gang members; we have

1 rapists; we have men that will never ever go home. So, our word
2 is all we have. And that's what we expect from our warden.

3 And there's been several times, numerous times,
4 the Association has met with the Warden, and we requested
5 certain things, and we sat there, and we met and talked. And
6 she seems real sincere and concerned, but she says she's going
7 to do something, but she never ever acts on it. She even gives
8 us specific timeframes that it'll be done by this time, and it's
9 never ever done.

10 And it's caused a real sour feeling in the mouth,
11 sour taste in the mouth of the supervisors. Most recently, for
12 a long time after that, after it happened several times, we
13 stopped meeting with Ms. Garcia. We recently started meeting
14 again with her, and our last meeting was on April 7th. And she
15 promised us something would be done by May 8th. Today is June
16 5th, and we still have not seen it.

17 And it's simple. We just want, on that specific
18 thing --

19 SENATOR JOHNSON: Would you mind sharing with us
20 what the something was, sort of briefly?

21 MR. BOREM: Sure. Actually, there are several
22 topics. One is rotation for supervisors on probation. When
23 you're newly promoted to a correctional supervisor, you go
24 through an one-year probation period. And she has said there
25 will be a rotation of the correctional supervisors to provide
26 them training, and that they will do four months in one area,
27 they will rotate them to another other area and do four months,
28 and four months, and four months.

1 This does not happen. Some supervisors are in
2 their entire job for 14-18 months all through the probation.
3 Some supervisors get job changes every month.

4 We just want something equitable for all the
5 supervisors on that deal.

6 Also, the issue arose at one time that the
7 supervisors felt we were being disciplined according to the
8 Bargaining Unit 6 contract as far as the sick leave policy. And
9 Ms. Garcia stated that that would be taken care of. That was
10 never done.

11 Recently we met, like I was saying, on April
12 17th. We wanted a new overtime policy, because the one that's
13 in effect now the supervisors are not happy with. And I
14 discussed it, and she said she would have the new one signed by
15 May 8th. Here it is today, June 5th; that is still not done.

16 CHAIRMAN BURTON: The parade of everybody who
17 works in the prison, including those representing the lower on
18 the pay scale and that, where a few said in their praise, I
19 mean, do you think she's just got a thing for supervisors, or
20 what do you think?

21 MR. BOREM: Well, if you're real loyal to her,
22 she will treat you real well. And not saying you should not be
23 loyal to the Warden --

24 CHAIRMAN BURTON: I don't know much about much,
25 but members of the Local 10 never appeared to me to be
26 bootleggers.

27 I mean, what do you think it is? I'm serious.
28 You're the only ones, and maybe it's because you all aren't

1 covered by collective bargaining or something, but what do you
2 think? She's got a beef with supervisors as opposed to, you
3 know, you're the same group on the first warden coming up, and
4 going, you know, all negative and positive here.

5 So, out of curiosity --

6 MR. BOREM: I don't think she has a beef with
7 supervisors in general. Actually, I think she is very qualified
8 to do the job, and she is capable.

9 But she just promises us things, and she never
10 acts on them. Let them be her fault or her --

11 CHAIRMAN BURTON: She ought to get back and tell
12 you.

13 MR. BOREM: -- management team's fault.

14 CHAIRMAN BURTON: She ought to get back to you
15 and say, I can't do it. Or, I've got to do it next week because
16 I'm doing something else.

17 MR. BOREM: Right. That has caused a lot of
18 discontent with the supervisors.

19 There was one occasion that I met with her over a
20 drawing that was posted in a well respected -- well respected
21 union member's bulletin board. The drawing was of a
22 correctional officer. It had a screw going through his chest,
23 and it had a name on it of a CCSO person, Captain Diamond, like
24 maybe he was killing this person.

25 So, I met with Ms. Garcia, me and one other
26 correctional sergeant. We went into her office. We closed the
27 door, and we showed discontent for the drawing.

28 She said that she understood our problems, and

1 she didn't like the drawing either, but she couldn't order them
2 to take it down, which I kind of understood because she didn't
3 want to get any kind of rift with the other, more powerful
4 union.

5 But after we left the office, it wasn't but five
6 minutes the person we complained had posted the drawing up
7 called me at work from his house saying, Ms. Garcia just called
8 me at home saying you're complaining, down there complaining and
9 crying about the drawing I posted.

10 CHAIRMAN BURTON: Well, she might have called him
11 and said, that's kind of an out of line thing; why did you do
12 it? Why don't you take it down?

13 He interpreted. I mean, she may or may not have
14 said you're crying, but she made a call to the guy and says,
15 this ain't good for anybody; what's wrong with you; you
16 shouldn't be doing this stuff.

17 MR. BOREM: Well, it was an issue for weeks prior
18 to that, because it was posted for weeks and weeks.

19 CHAIRMAN BURTON: Yeah, but you brought it to her
20 attention that day.

21 MR. BOREM: Well, it was brought to her attention
22 long before that.

23 SENATOR JOHNSON: In what form? Because the way
24 you've described it, within a matter of minutes after your
25 meeting with her on the issue, there had been a conversation.

26 You seem to put the spin on the conversation that
27 it was like tattling to this person. But an equally reasonable
28 interpretation, as Senator Burton says, is that she was

1 admonishing him. He didn't like it, and that's why he called
2 you.

3 MR. BOREM: The drawing was posted for at least
4 two weeks. She was aware of the drawing. It was in public
5 view.

6 CHAIRMAN BURTON: I mean, we don't want to pick
7 on you, Sergeant.

8 MR. BOREM: Right. I understand.

9 CHAIRMAN BURTON: You made the point that right
10 after you left her, or shortly thereafter, you get a call from
11 this guy saying, what are you doing? You were talking to
12 Warden, blah, blah, blah.

13 Senator Johnson's point and mine is, she
14 probably, you know, or at least an equal coin-flip
15 interpretation is, she's calling the guy and saying, you know,
16 the sergeant was in here, and you know that's an out of line
17 thing you did, and either what are you doing with it, or take it
18 down, or don't do that.

19 You know, in other words, trying to admonish him
20 that this isn't good for anybody. You know, a small thing like
21 that could screw up the whole thing.

22 MR. BOREM: We just felt our trust was violated
23 because we were talking to her in confidence, and she in turn
24 called him at home right after we left the office.

25 CHAIRMAN BURTON: You talked to her in
26 confidence. You wanted her to do something.

27 MR. BOREM: Correct.

28 CHAIRMAN BURTON: So, she did something.

1 MR. BOREM: But she didn't have to say we were
2 down there complaining about it.

3 CHAIRMAN BURTON: Oh, I see. I mean, I get that.

4 But having unfortunately kind of done the same
5 thing, and then the person says, for Christ's sake, as we say at
6 North Beach, that was with the shirts, you know, I kind of blew
7 the whistle.

8 But I mean, I don't think she was intentionally
9 trying to get -- I don't know what she was thinking, so I can't
10 speak, but I mean --

11 SENATOR JOHNSON: Just to belabor the point a
12 little, since that seems to be the order of the day in any
13 event, in that meeting with the warden, did you and your
14 colleague who went in, you emphasized you closed the door.

15 Did you ask her to keep this in confidence?

16 MR. BOREM: No, I do not believe we did, but when
17 she closed the door and invited us into the office, we assumed
18 it was in confidence.

19 CHAIRMAN BURTON: She didn't want the secretary
20 to hear it.

21 SENATOR JOHNSON: That's a pretty thin thread.

22 MR. BOREM: The problem is, in order to lead your
23 troops to battle, and sometimes at Calipatria we have to battle,
24 we have riots and everything, you have to have the respect and
25 trust of your leaders, and the supervisors of Calipatria at this
26 point do not.

27 CHAIRMAN BURTON: I got it.

28 The basic thing is that there's like, but there's

1 a lack of trust and, in some instances, respect for the Warden
2 among the supervisory personnel.

3 MR. BOREM: To put it in a nut shell, yes.

4 CHAIRMAN BURTON: That's not good for the
5 institution.

6 MR. BOREM: Correct.

7 CHAIRMAN BURTON: Okay, thank you.

8 MR. BOREM: You know, she is capable of doing the
9 job.

10 CHAIRMAN BURTON: Okay, thank you.

11 Any others?

12 I would suggest, free advice is worth what you
13 pay for it, as the next person's coming up, is that you ought to
14 have a meeting, and this kind of clears the air or muddies it,
15 to have a meeting with them because I think it's actually kind
16 of better that they're coming out, doing this, than having stuff
17 fester.

18 I don't know how you run a prison, but it
19 wouldn't seem that you need that type of thing. If they think,
20 rightly or wrongly, that either your word isn't good, or you
21 commit to stuff you can't deliver on and don't get back to them,
22 and you could be like me, you don't want to give anybody bad
23 news, so you kind of hope it will go away, but I would think
24 that a meeting with them, and then it's up to them, but whether
25 it's the entire supervisorial staff or a group selected by them
26 to clear the air and see what happens is going to stand you in
27 good stead.

28 Now, what you do about cross-covering, and all

1 that stuff, I think those are administrative and maybe budgetary
2 matters and other stuff. But if people don't think they can go
3 to you and say, this is a problem. You say, I'll get on it.
4 And whether rightly or wrongly, they don't think you do, their
5 reality's the perception they have.

6 Go ahead, officer.

7 MR. MALDONADO: Good afternoon, Committee
8 Members. My name is Mike Maldonado. I'm a Correctional
9 Lieutenant with the Department of Corrections.

10 I was employed by Calipatria State Prison from
11 1992 until March of 2001. I come here today --

12 CHAIRMAN BURTON: You're no longer there?

13 MR. MALDONADO: No, I am not.

14 I drove almost 600 miles to attend today on
15 behalf of my brothers and sisters who still remain at Calipatria
16 State Prison, officers, supervisors, the like. Some of those
17 people could not be here today because of fear of retaliation.

18 Some of the things occur. Obviously it's not a
19 new thing to have discrepancies with hiring practices. That is
20 something that occurs at Calipat.

21 Basically, like was mentioned before, loyalty.
22 Sometimes the loyalty under the administration of Ms. Garcia
23 means more than meeting the minimum qualifications. And that's
24 been an over -- a very big factor that has occurred.

25 Retaliation is another. Anybody who questions a
26 decision that is made by Ms. Garcia, or in any capacity, is
27 subject to discrimination, harassment, and retaliation. I have
28 seen this in my tenure at Calipatria, and also have been part of

1 that also.

2 Basically my reasoning for being here today,
3 because obviously this is not a popular thing to do, to go and
4 voice an opposition against a Warden's confirmation in front of
5 the public that everybody will hear and see. The word political
6 suicide has come up many times, and I understand that.

7 But in my beliefs, what's right is right, and
8 what's wrong is wrong. Everybody in this room, as well as
9 pretty much everybody in this world, they know what's right from
10 wrong. They make a decision either to do right or to do wrong.

11 CHAIRMAN BURTON: We got that, Lieutenant.

12 MR. MALDONADO: Okay, I'm sorry.

13 CHAIRMAN BURTON: What prison are you at now?

14 MR. MALDONADO: I'm at Centinela State Prison
15 now.

16 CHAIRMAN BURTON: Where is that?

17 MR. MALDONADO: It's about 40 miles in the
18 opposite direction of Calipat. It's in the Imperial Valley.

19 CHAIRMAN BURTON: Just curious.

20 Get the Warden on the phone.

21 [Laughter.]

22 CHAIRMAN BURTON: Just kidding.

23 You're sure a hell of a guy. He told me that.

24 [Laughter.]

25 MR. MALDONADO: I'll tell you that in a few
26 minutes.

27 At any rate -- I'm sorry. I lost my train of
28 thought.

1 CHAIRMAN BURTON: That she retaliates against
2 people if they don't agree with her or question her.

3 MR. MALDONADO: Correct.

4 Basically, I don't have all the answers, nor
5 would I try to pretend that I do. But absolutely when these
6 decisions are made, because as the appointing authority and as
7 the approving authority, she is ultimately responsible for all
8 decisions that are made within the confines of that particular
9 prison.

10 So, when hiring practices are determined to not
11 be on the up and up, that does affect everything that occurs
12 within your prison, as well as your staff members.

13 Could it keep from creating situations that
14 occurred? I'm not going to say 100 percent yes or no because I
15 don't know. Could they have an impact? Absolutely.
16 Absolutely, which also affects your morale, and that affects the
17 overall operational implementation of your institution.

18 And with that, I wanted to keep it nice and
19 short, but basically the question that I would ask myself is, in
20 a very litigious society that we're in right now, is this the
21 kind of individual that you want running the prison?

22 I will leave you with that. Thank you.

23 CHAIRMAN BURTON: Any others?

24 Would you like to respond, Warden?

25 MS. GARCIA: On which issue, Senator Burton?

26 CHAIRMAN BURTON: Well, I think on the issue of
27 trust, on the issue of retaliation, on the issue of keeping your
28 word.

1 I think the thing about whether or not -- and
2 also I think that the vacancies of the supervisory.

3 First of all, I think you explained to Senator
4 Karnette why you didn't fill vacancies, although you might want
5 to do that briefly, then about the other.

6 But I think more importantly than what you say is
7 going to be what you do. And I think it'd be important for you
8 and the prison to have that meeting, after, as I say, the air's
9 been cleared here, but I think you want to have that meeting.
10 If they've got some legitimate beefs, take a look at them. If
11 they don't, you tell them they don't have any beefs, and then --

12 MS. GARCIA: Okay.

13 One of the complaints by CCSO is a February
14 meeting that he said that the issues were addressed and never
15 handled.

16 Our March minutes reveal that of the five issues
17 that we addressed in February, four were addressed, and one we
18 agreed to disagree, and we held a -- and he filed a grievance.
19 And he was supposed to take it to third level.

20 There have been some delays in some of the
21 procedures. The overtime procedures for supervisors, because it
22 involves another component of supervisors under CCPOA, needed to
23 be reviewed by both parties. We were delayed in implementing
24 it. We signed it in November, 2001.

25 But what they failed to notice, we already had a
26 procedure in place. Some things you assume that your
27 subordinates will handle. I worked very closely with the ERO to
28 make sure that if we did not meet our deadline, to let Sergeant

1 Borem know why and what the delay was.

2 And so, most of our discussions, because he
3 worked in in-service training, we saw each other everyday. We
4 would talk to him about it. This is a problem we're having, and
5 we're working on it. It was never meant as neglect.

6 CHAIRMAN BURTON: So, you disagree with his
7 assessment of how it worked?

8 MS. GARCIA: In part.

9 CHAIRMAN BURTON: Again, I would strongly
10 recommend that when you go back to the prison that you have, as
11 soon as possible, which means really very soon, a meeting with
12 them, and just lay the stuff out. Because, you know, if part of
13 it's a misunderstanding, and then part of it is, which is very
14 close to the heart of every labor organization, i.e., staffing
15 standards, which means more jobs or more overtime, that's a
16 budgetary thing.

17 But I would strongly not just recommend but
18 almost direct that you have the meeting with him, then what
19 comes will come.

20 Any other questions, Members of the Committee?

21 Call the roll on the nomination.

22 SECRETARY WEBB: Senator Karnette.

23 SENATOR KARNETTE: Aye.

24 SECRETARY WEBB: Karnette Aye. Senator Knight.

25 SENATOR KNIGHT: Aye.

26 SECRETARY WEBB: Knight Aye. Senator Johnson.

27 SENATOR JOHNSON: Aye.

28 SECRETARY WEBB: Johnson Aye. Senator Burton.

1 CHAIRMAN BURTON: Aye.

2 SECRETARY WEBB: Burton Aye. Four to zero.

3 CHAIRMAN BURTON: Thank you very much.

4 MS. GARCIA: Thank you.

5 CHAIRMAN BURTON: George Giurbino, Centinela.

6 Do you have family here?

7 MR. GIURBINO: Yes, I do.

8 CHAIRMAN BURTON: Why don't you introduce them?

9 MR. GIURBINO: I'd like to introduce my wife,

10 Linda Giurbino. And although I have three children, they're not
11 able to make it here today. They're all participating in final
12 exams this week.

13 CHAIRMAN BURTON: Go ahead.

14 MR. GIURBINO: Good afternoon, Senator Burton,
15 and honorable Members of the senate Rules Committee. I'd like
16 to thank you for scheduling my appearance before you here today.

17 Again, my name is George Giurbino. I'm the
18 Warden at Centinela State Prison.

19 I began my career with the Department of
20 Corrections in 1980 as a correctional officer at the California
21 Rehabilitation Center in Norco. During the last 21 years, I've
22 promoted from correctional officer to correctional sergeant, to
23 correctional lieutenant, to correctional captain, to associate
24 warden, to deputy warden, and then to warden where I currently
25 am now.

26 CHAIRMAN BURTON: We have your resume. I just
27 want to get to a couple of questions. You seem to have no
28 opposition.

1 According to our staff, or according to somebody,
2 you're like at 192 percent capacity?

3 MR. GIURBINO: Correct.

4 CHAIRMAN BURTON: How does that work? Not too
5 well?

6 MR. GIURBINO: Well, the institution's designed
7 intent when the institution was manufactured, it was designed
8 for 2,208 inmates.

9 CHAIRMAN BURTON: Right, and now you have 4254.

10 MR. GIURBINO: Correct. With the activation of
11 the institution, the institution went directly into
12 overcrowding, each one of the cells. At 2,208 it was single
13 celled. All of our cells, like the other institutions in the
14 state, are double celled.

15 CHAIRMAN BURTON: Built for double cells? How
16 big's a cell?

17 MR. GIURBINO: Nine by six.

18 CHAIRMAN BURTON: Like from you to me?

19 MR. GIURBINO: From about me to you in length,
20 and about the width of a little bit more than this table.

21 CHAIRMAN BURTON: And there's two guys in there?

22 MR. GIURBINO: Yes, sir.

23 CHAIRMAN BURTON: Do they get on each other's
24 nerves pretty good?

25 MR. GIURBINO: At times it can occur. By and
26 large, we try to let them -- work with them in housing so that
27 they are with somebody they feel that they're relatively
28 compatible with.

1 CHAIRMAN BURTON: I've often wondered if I was in
2 prison, whether I'd want to have somebody in there with me to
3 talk with or be by myself. At that size, I think by myself.

4 If you are going to double cell, which you do,
5 probably it should be at least double that size, right, if
6 you're building a new prison somewhere?

7 MR. GIURBINO: I'd probably have to do some
8 additional study on the appropriate size.

9 CHAIRMAN BURTON: We're just kind of palavering
10 here.

11 MR. GIURBINO: The size appears to accommodate
12 them. Certainly the inmates would appreciate additional space.

13 CHAIRMAN BURTON: So, the bunching up doesn't
14 cause a lot of problems?

15 MR. GIURBINO: I would say that probably
16 overcrowding does tend to cause some degree of tension inside
17 the institutions, but --

18 CHAIRMAN BURTON: Do you have a lot of problems
19 in yours?

20 MR. GIURBINO: Normally no.

21 CHAIRMAN BURTON: Okay.

22 Senator Johnson.

23 SENATOR JOHNSON: No questions.

24 CHAIRMAN BURTON: Senator Knight.

25 SENATOR KNIGHT: No questions.

26 CHAIRMAN BURTON: Witnesses in support,
27 briefly. We know who you are, just let us know name, rank, and
28 serial number.

1 MR. DIN: Ray Din, CCWA, Southern Region VP in
2 support. Thank you very much.

3 CHAIRMAN BURTON: You were here all day, and you
4 haven't talked yet. We'll give you a few more minutes.

5 MS. POWERS: Barbara Powers. I'm a Member of the
6 Correctional Institution Committee. On behalf of the CSEA
7 employees at Centinela, we would like to offer our support for
8 Mr. Giurbino's confirmation.

9 CHAIRMAN BURTON: Thank you.

10 Next.

11 MR. GARCIA: My name is John A. Garcia. I'm a
12 correctional lieutenant at Centinela State Prison.

13 CHAIRMAN BURTON: And in support?

14 MR. GARCIA: I'm in support and the Chapter
15 President of CCSO. We're in support.

16 CHAIRMAN BURTON: Thanks.

17 Next.

18 MR. TATUM: I am Richard Tatum, State President
19 of CCSO, and we support Mr. Giurbino.

20 Thank you.

21 CHAIRMAN BURTON: Lieutenant, you're in support?

22 MR. MALDONADO: I am in support.

23 CHAIRMAN BURTON: Thank you.

24 Witnesses in opposition?

25 Hearing none, call the roll.

26 MR. MALDONADO: I just want to say.

27 CHAIRMAN BURTON: He's a hell of a guy.

28 MR. MALDONADO: He's a hell of a guy, and anybody

1 who knows me that can attest to that --

2 CHAIRMAN BURTON: You know right from wrong.

3 MR. MALDONADO: That too. I don't come off with
4 those, but he's restored my faith in professionalism, and he
5 exudes an honesty that I have only come across on great, rare
6 occasions.

7 And I do support him fully.

8 CHAIRMAN BURTON: Thank you, Lieutenant.

9 Call the roll.

10 SECRETARY WEBB: Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye. Senator Johnson.

13 SENATOR JOHNSON: Aye.

14 SECRETARY WEBB: Johnson Aye. Senator Burton.

15 CHAIRMAN BURTON: Aye.

16 SECRETARY WEBB: Burton Aye. Three to zero.

17 CHAIRMAN BURTON: Congratulations.

18 MR. GIURBINO: Thank you.

19 [Thereafter, SENATOR KARNETTE

20 added her Aye vote, making the

21 final vote 4-0 for confirmation.]

22 CHAIRMAN BURTON: Go ahead, Warden.

23 MR. KNOWLES: Senator Burton and Members of the
24 Senate Rules Committee, my name is Michael Knowles.

25 Thank you for the opportunity to present my
26 qualifications as appointed Warden of Mule Creek State Prison in
27 the City of Ione.

28 I've been a Department of Corrections employee

1 for nearly 25 years. I began as a correctional officer,
2 promoted throughout the custodial and administrative ranks in
3 several institutions throughout my career, and have been in
4 managerial positions for the past 15 years. I've worked at Mule
5 Creek State Prison for the past 3 years and was appointed Warden
6 in July of 2001.

7 Dedicated and experienced staff enable me to
8 manage a program oriented institution, where public, staff, and
9 inmate safety is a priority. I am proud to be part of the
10 ongoing success of Mule creek State Prison.

11 Thank you again for the opportunity to be before
12 you.

13 CHAIRMAN BURTON: Do you have any family here?

14 MR. KNOWLES: No, sir.

15 CHAIRMAN BURTON: Questions, Members of the
16 Committee?

17 SENATOR KNIGHT: Do you like your job?

18 MR. KNOWLES: Yes, I do.

19 SENATOR KARNETTE: I don't have any questions.

20 CHAIRMAN BURTON: You're at 213 percent
21 overcrowding?

22 MR. KNOWLES: Yes, sir.

23 CHAIRMAN BURTON: Do you have some in the dining
24 room?

25 MR. KNOWLES: In the gym. I've activated all
26 three of the gyms I have in the three facilities and have
27 inmates in them.

28 CHAIRMAN BURTON: So, there's no gyms for the

1 inmates?

2 MR. KNOWLES: No, sir.

3 CHAIRMAN BURTON: What does that do to the, shall
4 we say, tensions' inside the prison?

5 MR. KNOWLES: Well, overcrowding creates to the
6 tension. Most of the inmates adapt pretty well to it, and we
7 work with them to make sure that have compatible cell partners.
8 And we're very successful doing at that, but there are occasions
9 where inmates have difficulty coping with that.

10 CHAIRMAN BURTON: How long have you been there?

11 MR. KNOWLES: I've been there for three years.

12 CHAIRMAN BURTON: So, you went in at 96 percent
13 interrupted days, and you're down to only 38? I'm talking
14 lockdowns.

15 MR. KNOWLES: We have minimal lockdowns, sir.

16 CHAIRMAN BURTON: But you knocked it down from 96
17 percent of interrupted days to 38 percent?

18 MR. KNOWLES: Yes, sir.

19 CHAIRMAN BURTON: Ninety-six, that's every day
20 almost.

21 MR. KNOWLES: That's some form of modified
22 program at the institution, yes. We've been very successful.
23 We're program oriented. We've been so successful in operating
24 the institution without lockdowns that --

25 CHAIRMAN BURTON: Well, I would suggest that
26 maybe you put down on paper whatever you've been doing and get
27 it to Corrections to get it to the other institutions, unless
28 the only people you have are petty thieves and bookmakers.

1 MR. KNOWLES: No, sir. We're a Level IV and
2 Level III institution.

3 CHAIRMAN BURTON: And I'm very serious about
4 that, that whatever's worked for you, you ought to let the other
5 ones know because that's a dramatic decrease.

6 MR. KNOWLES: Yes, sir.

7 CHAIRMAN BURTON: Witnesses in support. All
8 right.

9 MR. TATUM: Richard Tatum, State President of the
10 California Correctional Supervisors.

11 Just a short statement. I have known Mr. Knowles
12 since he was a sergeant for me in 1981. I was a lieutenant.
13 And he was same individual then that he is now. He's an
14 employee that's worked his way up from the bottom all the way
15 through and has the experience of many years as a supervisor,
16 and understands what supervisors go through.

17 With that, our organization supports him fully.

18 CHAIRMAN BURTON: Next.

19 MS. POWERS: Barbara Powers. I am the DLC
20 President for the prison that Mr. Knowles runs. I am also a
21 member of the Correctional Institution Committee for CSEA, which
22 is a statewide committee.

23 I presented a very, very brief statement to your
24 Committee.

25 CHAIRMAN BURTON: We've got that as part of the
26 record.

27 MS. POWERS: And what I did not include in the
28 statement that I wanted to emphasize is that what I have seen

1 today, that there has been a lot of concern over people's
2 integrity and their veracity.

3 I wanted to say that this is one of the first
4 wardens that I've had that I have not had to ever question any
5 information that he has told me. We have come to an agreement
6 that maybe there is information that he will not share, but he
7 doesn't tell me inappropriate information, and I appreciate it
8 very much.

9 On behalf of my employees at the institution, we
10 support the confirmation of Mr. Knowles.

11 CHAIRMAN BURTON: Thank you.

12 Next.

13 MS. CAMPBELL: Hi. I'm Sandi Campbell. I'm
14 Chapter President at Mule Creek State Prison's California
15 Correctional Peace Officers, and I am here in support of
16 Mr. Knowles for Warden at Mule Creek State Prison.

17 And since he's been there, it's been an absolute
18 pleasure. I want to keep it short, because we are getting short
19 on time.

20 Thank you.

21 CHAIRMAN BURTON: Thank you.

22 Witness in opposition, briefly.

23 MS. BIRD: Wouldn't you like to hear opposition
24 at 10 til 5? I'll be brief.

25 I've put out a 20-page report of complaints,
26 summarized from 89 inmates at the web site, and it was submitted
27 to you sometime ago.

28 CHAIRMAN BURTON: That's part of the record.

1 MS. BIRD: Okay.

2 I really don't know what I could say to you that
3 would make you not confirm Mr. Knowles, but the UNION opposes
4 his appointment.

5 I spent the entire day yesterday going through
6 piles of complaints that put me in absolute grief. Just as
7 you're frustrated, I'm in grief from what's happening at that
8 prison.

9 Yes, they do not have lockdowns in the same
10 manner that High Desert, and Pelican Bay, and Landcaster have
11 them, but they leave people in lockdown inordinate amount of
12 time by doing things like fog alerts that go on for most of the
13 day. They just never take the inmates out of their cells, and
14 they're not allowed to program or shower, or do whatever. They
15 put them in there whenever the heat-sensitive inmates have to
16 come in and be counted, then all of the inmates have to be
17 counted.

18 But really, when we just get to the most
19 important aspects of this, there are lawsuits that have been
20 filed, a lot more that are going to be filed, over medical
21 neglect. It's the cruelest form of murder. I have stories that
22 would make God Himself cry. I've been covering this in my
23 newsletter for sometime, and I'm going to be covering it even
24 more.

25 In the gymnasium, there's --

26 SENATOR JOHNSON: Ma'am, you know, I did have an
27 occasion, although I don't use computers, to see some of the
28 material that you put on your website about your appearance

1 before this Committee previously. And your characterizations of
2 what occurred in that meeting, and your characterizations of a
3 Member of this Committee, Senator Knight, were so wildly off
4 base, and I was here.

5 So, my question is, why in the world should I or
6 other Members of this Committee take your general accusations
7 seriously, when one event that you reported that I was present
8 for was so totally wrong?

9 MS. BIRD: Each one of us experiences different
10 perspectives.

11 And you're one of the people who voted against
12 amending the Three Strikes law when these conveyer belt laws
13 have filled the --

14 SENATOR JOHNSON: Yes, I did, and I co-authored
15 the Three Strikes law. I also happen to be an individual that
16 one of the first bills I introduced when I was elected to the
17 Legislature was to prohibit double celling, to have one prisoner
18 to a cell.

19 So, don't come up here and start attacking me.

20 The question was, why in the world, when the only
21 thing that you've reported on that I was personally witness to,
22 you were not only wrong, you were totally wrong.

23 MS. BIRD: Well, that's your perspective. But
24 that's not my perspective.

25 And anyone who would vote against amending the
26 Three Strikes law, knowing that people are dying --

27 CHAIRMAN BURTON: Let me just say this.

28 If the Legislature had had the wisdom to pass the

1 Three Strikes bill that Senator Johnson had, which was three
2 violent felonies, nobody would be having much of a beef about
3 the issue.

4 MS. BIRD: But he didn't change his mind, even
5 knowing that --

6 CHAIRMAN BURTON: I know that, but let's stay on
7 with this.

8 I'll tell you something, ma'am, I've heard you
9 testify on every warden, and my heart almost was overflowing
10 with admiration when you came up in support of the warden today.
11 But we've got to get to specifically, and we have what you have
12 on the website, and the staff has thoroughly reviewed that.

13 But just your specifics to the Warden here before
14 us, and we don't want --

15 MS. BIRD: All right.

16 In the gymnasium, they're stacked three bunks
17 high. They're 18 inches apart.

18 CHAIRMAN BURTON: They are 200 percent -- they're
19 overcrowded. He didn't do it.

20 MS. BIRD: But he puts up with it.

21 CHAIRMAN BURTON: He could resign the job.

22 MS. BIRD: It's illegal. There's dangerous
23 conditions in there. He could stand up and say, "I resign the
24 job because these are inhumane conditions, and I refuse to
25 subject human beings to this kind of treatment." He could.

26 But that would take a person of character to
27 stand up and say this is wrong.

28 CHAIRMAN BURTON: And probably a person very

1 close to retirement.

2 [Laughter.]

3 MS. BIRD: To me, it's not funny because I'm
4 reading these heart-breaking situations. A person died there a
5 couple weeks ago in the mentally -- he was a mentally ill. He
6 was a young man. He started seizing. The guards took him out
7 on the concrete. They left him for 27 minutes, seizing, because
8 they couldn't pick him up and carry him through a narrow gate.
9 He was just a few feet from the clinic. His name was Glen Horn.
10 He is dead. He didn't get his vitals checked. He didn't get
11 emergency medical care. It's nonexistent there.

12 And I have all kinds of files that I'm very
13 willing to share with you.

14 CHAIRMAN BURTON: I think, again, it's better
15 shared with the Department of Corrections.

16 MS. BIRD: I did have my meeting with them.

17 CHAIRMAN BURTON: Did you meet with Senator
18 Presley.

19 MS. BIRD: Yes, I did.

20 CHAIRMAN BURTON: How did that go?

21 MS. BIRD: I felt that he was compassionate;
22 however, the other people at the meeting just had a lot of spin
23 and excuses. They didn't really want to fix anything, change
24 anything.

25 CHAIRMAN BURTON: Mike, she has some information
26 about the conditions at Mule Creek and some other prisons, but
27 specifically that. And I think that would be very helpful.

28 And I'm glad the meeting with Senator Presley, at

1 least he did show some compassion.

2 MS. BIRD: He did show compassion. But again,
3 I've been fighting these battles for years, and nothing ever
4 happens, nothing ever gets resolved.

5 CHAIRMAN BURTON: Well, he's the man who can do
6 it. He's the Secretary of the Agency.

7 MS. BIRD: Well, he didn't give me any indication
8 that he was going to fix anything, and there is no other meeting
9 scheduled.

10 There seems to always be just an excuse.

11 CHAIRMAN BURTON: Can you get another meeting
12 with the Senator for her?

13 MS. BIRD: Well, only if it's to tell me what's
14 going to be done. Sympathy is good, but it's not reform.

15 CHAIRMAN BURTON: No, with a direction to
16 respond.

17 Thank you.

18 MS. BIRD: Thank you.

19 Anyway, we definitely oppose.

20 CHAIRMAN BURTON: Any other witnesses in
21 opposition? Hearing none, call the roll.

22 SECRETARY WEBB: Senator Karnette.

23 SENATOR KARNETTE: Aye.

24 SECRETARY WEBB: Karnette Aye. Senator Knight.

25 SENATOR KNIGHT: Aye.

26 SECRETARY WEBB: Knight Aye. Senator Johnson.

27 SENATOR JOHNSON: Aye.

28 SECRETARY WEBB: Johnson Aye. Senator Burton.

1 CHAIRMAN BURTON: Aye.

2 SECRETARY WEBB: Burton Aye. Four to zero.

3 CHAIRMAN BURTON: Congratulations.

4 MR. KNOWLES: Thank you; Senator.

5 [Thereupon this portion of the
6 Senate Rules Committee hearing
7 was terminated at approximately.

8 5:12 P.M.]

9 --ooOoo--


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this
____ day of June, 2002.


EVELYN J. MIZAK
Shorthand Reporter

I am B. Cayenne Bird, United for No Injustice, Oppression or Neglect, UNION Director speaking on behalf of 6000 individuals and groups in opposition to the confirmation of Mule Creek Warden Michael Knowles.

If I give voice to the voiceless, those in our society who have been devastated by overly harsh, conveyor belt laws it is because they are being ignored by you. Why else would anyone vote against Amending the 3X law when it is common knowledge throughout the world that California cannot properly care for prisoners?

What voice could I use to convince you that Knowles is unfit for the job? Should I shout to express the anguish that I feel over conditions that would make God himself cry? Would you believe the documented evidence that Knowles practices the cruelest form of murder - medical neglect?

Would having each of you spend one night in the gymnasium stacked 3 bunks high with beds just 18" apart with toxic, disease-ridden air quality cause you to raise an eyebrow? It might be uncomfortable for you to sit on a toilet just 12" from another man with no privacy - IF you can get a toilet with 160 mostly very ill inmates vying for only ten seats. And, we must remember that the symptoms of rampant Hep C include diarrhea.

But there is no respect for sanitation and disease at Mule Creek. Knowles allows inmates infected by Hep C to work in the kitchen, use their hands to serve food. These hands may be gloved at times, but their forearms and up to their elbows when mixing certain foods are not covered and they have no soap and water in the bathrooms most of the time.

Just what voice does one use to object to a system and its wardens who commit crimes against humanity with no conscience? Would crying, yelling, taking my usual business-like tone make one bit of difference to you?

These conditions are reality. A summary of 89 complaints is posted at our website for anyone who really wants to know the details of what is happening at Mule Creek and most other prisons in the name of justice statewide.

Michael Knowles will prove to be the most expensive warden that you've ever hired with the number of lawsuits already filed against him and many of the guards he empowers with his own made up rules. There is no respect for Title 15 at Mule Creek State Prison. The UNION does not believe that psychological torture by the thugs and bullies he allows to do as they please is corrective or rehabilitative in any way.

He conned the MAC Committee into writing a letter of endorsement, dangling the carrot that he would correct most of the 89 complaints. As of yesterday, he had corrected none of these complaints and the MAC Committee feels used and tricked by a man whose word holds no merit.

I was overwhelmed with grief after spending an entire day trying to figure out how to summarize the extreme cases of abuse in my files. Each time I thought I had set aside the worst cases an even more shocking one popped up in the pile. My father, grandfather, and son were all Veterans, and I have spent my entire life being a patriot through three decades of journalism. I can tell you right now that the atrocities happening as business as usual at Mule Creek Prison and most of the other prisons in

the State is the opposite of what my ancestors wanted to see happening in the name of justice and liberty. There are too many people in prison. It is unAmerican, unChristian to cage and not take care of people's basic needs, to destroy tens of thousands of connected families over crimes that aren't really crimes.

A legislature is simply a collection of people paid to represent special interests, using government to impose their will on everyone else. I have plenty of details on blatant medical neglect, severe psychological intimidation, inhumane and illegal conditions and much, much more. Just recently a young mentally ill man was allowed to seize 27 minutes on the cold concrete with no first aid, no checking of his vital signs, plenty of monkeys standing around scratching their heads instead of carrying him 100 feet to the prison infirmary. The other inmates are still traumatized over this, but there are no first aid classes scheduled for guards as a result of this needless death. This is business as usual at Mule Creek and most other prisons.

All I can do is wonder just what circumstance would result in firing someone as unbearably incompetent and callous as Michael Knowles? Either you don't believe me or you just don't care, either way I predict a flurry of lawsuits as the price that should be added to his annual salary.

The costs in both monetary and human terms will be great and could easily be prevented by your denial of his confirmation now. Thank you for allowing me to speak on behalf of suffering and dying inmates and their families.

Today is the Confirmation Hearing for Warden Michael Knowles of Mule Creek State Prison. It took an entire day yesterday to go through many files of complaints. A statement won't be easy to prepare because everything is wrong, people are dead and dying.....and nobody in charges gives a rat's behind.

In addition to these "reminders" of negligence at Mule Creek, there is a summary of 89 complaints which describes systemic dysfunction at all California State Prisons. One would need only to change the name of the prison and 99% of these conditions would still apply.

Is it any wonder that people are being returned to their communities sicker than before they were incarcerated?

These complaints DID get posted last night and are very, very worthwhile reading for everyone who wonders what really goes on in the darkness behind the walls. It was written a great personal risk by my precious loved one, Eric Knapp, who before experiencing a great injustice that destroyed his life at age 25, was an Army medical specialist, paramedic and military policeman with many years of service to our country.

He is a source that I trust implicitly, and has suffered and is now suffering retaliation and abuse for reporting Mule Creek's inner workings. He too, has filed a lawsuit, against Knowles and the guards who are allowed to harass him on a daily basis. Inmate filed lawsuits rarely win, but without them, nothing gets recognized, not to mention resolved.....There is no resolution....The only hope for resolution is for a citizen's group to form of such a size that the bums who allow this inhumanity can be voted out of office and 70% of the prison human bondage industry halted. 6500 WORKERS - key word

WORKERS - can change any law, and end the reign of tin gods who are destroying tens of thousands of families who are sitting by and allowing them to do so.

B. Cayenne Bird

Remember this complaint from 12/20 which appeared in our newsletter? It took months to get the first appointment even though Thomas Lee's thumb is graphically swollen ten times larger than anyone else's. The San Francisco doctor tried contacting the prison to advocate on his behalf for a second doctor's appointment but was ignored. A habeas has been filed and I'm showing this case to lawyers, knowing that Thomas Lee has three small children, a short sentence (he shouldn't even be in prison - a jury didn't put him there).

I appealed to Dr. Vismara in Senator Burton's office who visited Thomas Lee at Mule Creek State Prison several months ago for help. The inmates were told by the guards not to speak to anyone from the legislature about their problems "or else....." Thomas Lee could say nothing to Dr. Vismara but did manage to get desperate correspondence to me.

I communicated to Dr. Vismara that Thomas Lee was unable to speak to him without severe retribution. In spite of a very obvious need for medical care above the prison clinic level, I was told there was a new Chief Medical Officer at Mule Creek who was "on it" and that I could voice my concerns there. This is a very serious, life threatening, blatant case of medical neglect. I can see that some time of lawsuit has been filed, but I am hopeful that an excellent attorney will surface and take this one ALL THE WAY.

After more than a year of begging for medical help, documented proof that the prison knew of his condition at the time of his incarceration and refused to treat him, a lawsuit appears to be the only way he will ever get appropriate medical care.

The growths moved into his neck, popped up in large lumps around his spine and he can barely walk. All because a simple routine surgery on his thumb, which he has required all his life, was callously denied even after repeated requests to Knowles and the doctors.

I hope it happens, that everyone who ignored this plea is named in this lawsuit and held personally liable.

This neglect is very well documented every step of the way. Lee is in prison with a four year sentence because a mentally ill woman who wanted his apartment planted a child's firecracker in clay and put it in her ice chest.

This is the most insane situation and what's worse, the DA convinced him to plea bargain. Now his life is in danger and there is no help for him.

And to think, Mule Creek is their "model" prison. I have the blood curdling medical neglect complaints out of there but was told by Senator Burton's Dr. Vismara to "deal directly with the new CMO."

I have found dealing with CMO's to be a waste of breath statewide. Pass the buck,

transfer the call, the bureaucrats cannot remedy medical emergencies. They just say "No" maybe this person can help you.

Lawsuits naming individuals from the MTA on up to the President of the United States and pickets will be the only way to end the callousness around the cruelest form of murder - medical neglect.

Any sentence to prison is a potential death sentence. Just ask Thomas Lee and the family of dead inmate Glen Horn (report follows)

B. Cayenne Bird

Here's the excerpt from our newsletter 12/21. As far as I know, Lee has yet to get a second opinion.

Dear Cayenne:

A Christian Brother has a serious life threatening medical problem and is in need of special prayer by you and anyone else who cares. You already know of him and the sad tale of CDC's intentional indifference to his medical needs. His name is Thomas Lee P76292

First I will give you some history on him that will tell you something about his condition. From either birth or a very early age he was diagnosed with what has been nicknamed Elephantitise, due to the movie Hunch Back of Notre Dame, that is the disease that killed him. I can't pronounce the medical name, it is a long word and ends with Thrombosis?????something or other.

All his life every so often he has had to have surgery on his thumb as this is where the original tumor is located. They cut the roots and it is okay for some odd years and then they must do it again or it will spread up his arm and throughout his body and eventually kill him. Therefore, due to his LARGE THUMB (about ten times the size of the thumb on his other hand) he has been nicknamed "Tom Thumb".

He is a family man, he has a wife named Michelle and three beautiful babies whom he dearly loves. Two little girls and a little boy. This week he received divorce papers and it ROCKED his world.

Since Tom got here he has tried unsuccessfully to get the MANDATORY treatment he needs to STOP the spread of this tumor (cut the roots in the thumb), but to no avail. It spread up his arm and ANOTHER TUMOR began growing just below the elbow, then it went up his shoulder to his neck and yet ANOTHER TUMOR popped up. Keep in mind, these are all connected to the one in the thumb, when press on the one in his arm, he feels it in his neck and thumb.

This week another one came out on his SPINE. The most fatal one of them all, and he's losing control of his right leg and must walk with a cane. The spine tumor in 24 hours doubled in size and is now the size of a golf ball. They warned him a couple of months ago when they took him to San Francisco General to see specialists in this disease that it was too late. CDC had waited too long and the tumor was on the move

and would blind him, cripple him and probably kill him within the next year.

In two short months he has felt the spread of the tumor and this week discovering the one on his spine has shaken him and saddened him, as he is at the point where he has been told about all his life and spinal attack usually only takes a few short months (about 4) to kill. He needs strength during this time of crisis.

He loves the Lord and he is not Angry at God, but he needs the love and support of the Children of God here at Mule Creek State University to embrace him. He surely does feel abandoned by his wife. His babies' names are Amanda, Marcie and Tom Jr. He's not going to get to see them again if he goes to be with the Father within the next few months.

That bothers him a lot.

Thank you for allowing me to share with you that it hurts to have a good friend being condemned to die by the medical neglect in prison. Thank you so much for your time and consideration. Keep up the good work, you are a God-send to inmates, if I had anyone out there, I would surely send them to help you as a member of the UNION.

Signed

Mule Creek Inmate

I filed the medical complaint that FINALLY resulted in a visit to a specialist and reported on this story here in the UNION Daily Newsletter several months ago. Thomas Lee also contacted CDC and Senator Vasconcellos, others with his own complaint, which was ignored until I stepped in to insist on obtaining an examination. It appears that he had the visit and there was no effort made to stop the tumors from taking over his body. Whether or not it is too late, I can't say for certain.

I do believe this family has grounds for a medical neglect lawsuit, and his wife might want to reconsider a divorce because she and the children deserve compensation for this nightmare. How terrible it must be for her to bring three little children and sit in a visiting room with no toys watching their father suffer. How terrible it must be for him when good-byes are said, realizing it may be the last time he ever see them and wondering who is protecting them out in the world.

How frightening it must be for the other inmates around Tom to see him go in such a cruel and inhumane manner. When he sent me the outline of his fingers on both hands (which I faxed to CDC and Matthew Gray in Senator Vasconcellos' office) I couldn't help but cry.

Please ask your church to pray for Thomas Lee and others like him who are rotting away due to medical neglect and/or abuse in California's prisons and jails. If you would like to write to him, please let me know and I will give you the info.

There's quite a bit of news today but I just need a little time to recover from this particular heartache. I see these stories everyday and I just can't understand why the families of inmates refuse to form picket teams that could draw attention to these cases before they get out of hand, before they kill their loved ones.

How can anyone help people who are too ignorant to fight back for themselves by

reporting such cases to me, to the media, and be willing to picket any warden who would allow this callousness?

Our people need to do a much better job of letting inmates and their families know that it is their failure to organize which is allowing people to suffer and die at the hands of a callous criminal justice system in prison. We could have reached Tom Thumb much earlier and perhaps saved his life if he had only known about the UNION.

Voter Apathy and WEAKNESS in confronting evil are inexcusable and deadly for all inmates. The families have no choice but to pull together and show up for pickets, not just for themselves but for others too. There is no reason to be a victim of callous prison administrators.

God does not make us in the image of fear the Bible says. The answer to end medical neglect and imprisonment of people who haven't really committed serious crimes lies within you and your willingness to do a little EASY work.

This story deserves to be written up in the media for everyone to witness. I am happy to assist with contacts.

Tearfully yours in the struggle,

B. Cayenne Bird

Another newsletter excerpt of an inmate death where no attempt was made to help him whatsoever. He seized for 27 minutes on the cold concrete with the prison infirmary only a few feet away. No one checked his vitals, offered first aid or even bothered to carry him to help.

The other inmates are still in shock knowing how they will likely end up! Mule Creek is a living hell and Knowles will be the most expensive Warden the prison has ever had when all the pending lawsuits (more in the works) are battled in court.

I am so enraged that I plan to personally sit through each and every one of these trials. Let my presence make him realize that every inmate is some mother's child....

This went unreported by the Bee and other newspapers. This is a press advisory.

At MULE CREEK PRISON

On Friday, April 26, 2002 Inmate Robert Horn CDC P-13287 had a seizure inside his cell. Horn's inmate yelled to floor officers that his cellmate was down.

Responding officers (alleged to be Bolon and Purofoy) removed Horn from the cell and laid him down on the ground. His vital signs were not checked, nor was any first aid administered according to witnesses.

Horn was left lying on the cold concrete floor for exactly 27 minutes awaiting the arrival

of a golf cart "ambulance" which had to be manuevered through a narrow gate and driven a distance of only about 100 yds. to Horn's unit, Building #10.

It would have taken 4 officers no more than 5 minutes to place Horn into one of the orange body stretchers and carry him directly to the infirmary located only 100 yds. away.

Horn died. He was a mental helath patient assigned to the E.O.P. in Building 10. He was only 23 yrs. old born on June 10, 1978. The question is what has CDC learned from the medical neglect lawsuits filed against them for this very same reason.

They are literally getting away with murder. Reliable source at Mule Creek State Prison, lone

This one has not yet appeared. It was sent to me from several Mule Creek Inmates who fear retaliation on 3/31/02

Prison Gymnasiums

Prison gympasiums were not designed nor were they ever intended to house inmates. The size of the gyms here at MCSP are slightly larger than a regulation basketball court.

On sub-facility "B" there are 160 inmates housed in the gym, in double bunks. On sub A and C there are up to 160 inmates in each gym, in triple bunks, referred to as "cookie sheets" by inmates, because they are approximately eighteen inches apart and inmates must slide into their bunk as if they were on a cookie sheet.

The gyms were approved for temporary housing, up to 90 days. However, inmates have been housed ino ur gyms for several years. Inmate Lopez, D-66340 has been housed in Fac B gym for nine years.

During the past several years, there have been health alerts and outbreaks of Tuberculosis, Hepatitis and Scabies in our gyms.

There ten toilets in each one of our three gyms, which is an inadequate number to service 160 to 180 men, especially during the morning rush, when inmates must all be ready for morning chow at the same time. Sinks and showerse are also inadequate.

Exposed Gas Lines, electrical conduits and water pipes run along the walls and across the ceiling.

Sodium-arc drop lights hang from the ceiling directly over the inmates while they sleep.

Air quality in the gym is extremely unhealthy, ceiling insulation flakes, dust particles, lint from bedding (Wool blankets, sheets, towels, clothing and dead skin cells fill the air, drift down on sleeping inmates and is inhaled day and night by CDC staff and inmates.

Inmates are improperly placed in all the gyms at MCSP, Facility A is a level 4 yard with level 3 inmates housed in their gym. Facilities B and C are level 3 yards with level 1

and level 2 inmates housed in their gyms.

We understand these conditions are caused by over-crowding. However, they are illegal and are seemingly being ignored by administration.

Please help us Cayenne, please....nobody should have to live like this....not even an animal.

Mule Creek Inmates

Dear Ms. Bird

I am enclosing a copy of my account which shows a \$64 charge for eye glasses that never showed up. I need these eye glasses real bad. I don't know why I must work 250 hrs. before they are paid for since they're something I need. And now I'm paying and still don't have the glasses.

My family doesn't have money to send me, so this charge they put on my account means I can't have canteen or anything else until I work it off. The prison doesn't provide much, it is all the burden of the families.

Can you do anything to help me?

John Contreras

Dear Ms. Bird

I have read some of the articles you've written and would like to thank you for being a voice for prisoners that desperately need to be heard and I would also like to make a request.

Presently, I most desperately need your help. In one of your articles, it was mentioned that Dr. John Stanly is an internist and medical advisor to the UNION. In the article, Dr. John Stanly specifically spoke about inadequate medical care in the prison system.

Ms. Bird, as a result of recent medical treatment and lack thereof, my left eye is disfigured, my vision is permanently damaged and I am suffering other post surgery difficulties. Specifically, my eye was sunken in its socket 1/2" and when I sought medical attention I was told "nothing was wrong" with me. Subsequently I was diagnosed as having an orbital blow-out fracture. I remained in this painful and disfigured condition for a period of eleven months before mandatory corrective surgery was administered. During the entire eleven month period, I diligently sought medical remedy which often met with hostility and indifference.

From a layman's point of view, I believe the medical treatment I received as below professional standards, thus I have drafted a brief medical questionnaire outlining the care I received, formatted to yes or no answers to save Dr. Stanly's time. The yes or no

answers are connected to whether the particular care described was medically acceptable from a professional's standpoint.

I beg of you, please send the enclosed letter to Dr. John Stanly, I've provided a self addressed stamped envelope.

I apologize for the burden, but my recourses are few. Thank you for reading my letter Ms. Bird and thank you for being a voice/force to those in need.

Respectfully and Sincerely,

Lonnie Young

We have a policy whereby the UNION members all stand up for one another's loved ones and we do not handle medical complaints from non-subscribers. We used to do this and couldn't pay our bills, in fact, my phone bill used to be \$700 a month just faxing cases to journalists and legislators, handling medical complaints and that's why I moved to Sacramento.

We must be by subscribers for subscribers only because we have no paid staff, hundreds (thousands) of complaints such as these arriving daily. This is akin to working in an emergency room with no surgeons and no blood supplies to back me up.

No matter what is said to object to these warden confirmations, they are still hired and this neglect accepted as business as usual.

Yes, there is sympathy from certain legislators but no enforcement, all of it is considered business as usual and is quite acceptable to everyone. It isn't their loved one suffering, paying out the taxpayer's money in lawsuits isn't that important. After all, the UNION is about the only citizen's group that challenges these atrocities because we bother to listen to inmates and their families.

And we don't yet have the 6500 workers it requires to do recalls, change laws...so what pressure is there to make reforms?

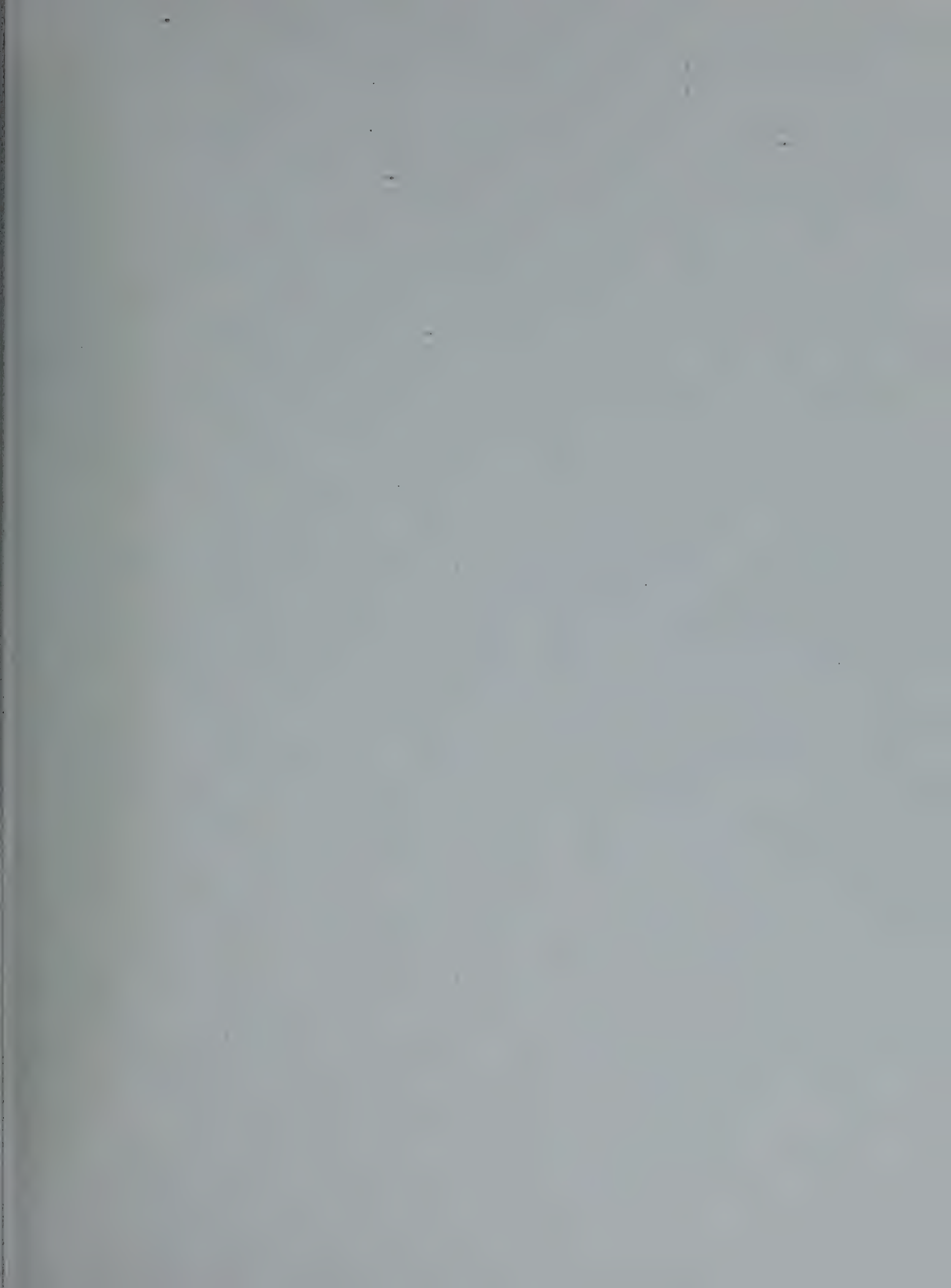
Sympathy is not reform. Sympathy is not remedy.

I will go there at noon today, muster all my courage, try not to yell even though I want to scream over all inhumanity and pray for a softening of hearts. At 1 p.m., please say a prayer for me as I will be sitting right next to evil in the form of one hell's gatekeepers, Warden Michael Knowles.

CDC is full of spin and excuses and the suffering and dying continues. I cannot, will not be sucked into believing excuses. There is no excuse for putting people in gyms for years at a time in conditions that are illegal even for a zoo animal.

Where is justice? Where is God? Is all of this inhumanity a solution to crime? Quite the opposite is true...

B. Cayenne Bird



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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

JOHN C. SPERRY, Member
California Horse Racing Board

SENATOR JOSEPH DUNN

SANDRA V. HUGHES, Deputy Director
Employment Development Department

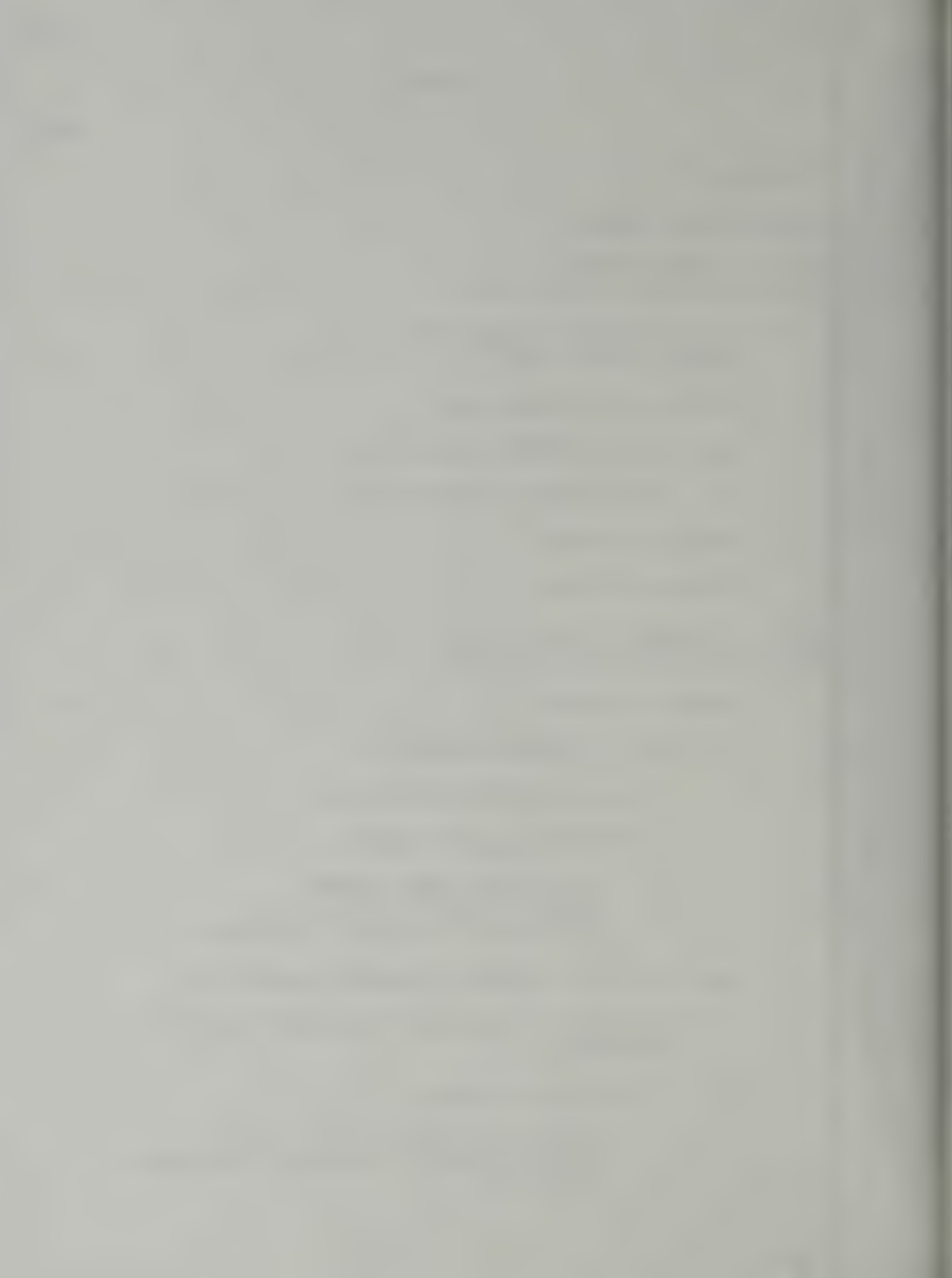
BARRY BREWER, Deputy Director of Legislation
Employment Development Department

SAM RODRIGUEZ, Chief Deputy Director
Employment Development Department

CYNTHIA K. THORNTON, Member
California Unemployment Insurance Appeals Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Is Mr. Sperry here? Come up.
Senator Dunn.

SENATOR DUNN: I just want to introduce
Mr. Sperry. I'll make it very quick because I know the
Committee's rushed.

I've known this individual and his work down in
Southern California. And I stand, or I actually sit before the
Committee in strong support of his nomination.

CHAIRMAN BURTON: Go ahead.

MR. SPERRY: Good afternoon, Senators. My name
is John Sperry.

I was appointed by the Governor for the
California Horse Racing Board, and I appear before you, asking
for your support to that position.

I have spent my life representing members working
in the food industry, and at the same time, I've spent about 30
years owning race horses myself. So, I'm quite familiar with
the horse racing industry as well as what people need to make
livings.

I believe that I can be a benefit to the Board in
many, many areas.

CHAIRMAN BURTON: Senator Johnson.

SENATOR JOHNSON: No questions.

CHAIRMAN BURTON: Senator Romero.

SENATOR ROMERO: No questions.

CHAIRMAN BURTON: Senator Knight.

1 SENATOR KNIGHT: No questions.

2 CHAIRMAN BURTON: Senator Karnette.

3 SENATOR KARNETTE: No questions.

4 CHAIRMAN BURTON: You spent 30 years betting or
5 30 years what?

6 MR. SPERRY: Thirty years raising and racing
7 horses.

8 CHAIRMAN BURTON: Any witnesses in support?
9 Witnesses in opposition?

10 Hearing none, Senator Romero moves. Secretary,
11 call the roll.

12 SECRETARY WEBB: Senator Karnette.

13 SENATOR KARNETTE: Aye.

14 SECRETARY WEBB: Karnette Aye. Senator Knight.

15 SENATOR KNIGHT: Aye.

16 SECRETARY WEBB: Knight Aye. Senator Romero.

17 SENATOR ROMERO: Aye.

18 SECRETARY WEBB: Romero Aye. Senator Johnson.

19 SENATOR JOHNSON: Aye.

20 SECRETARY WEBB: Johnson Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Five to zero.

23 CHAIRMAN BURTON: Congratulations. Make your
24 plane.

25 MR. SPERRY: Thank you for your time.

26 [Thereupon the Rules Committee
27 acted upon legislative agenda
28 items.]

1 CHAIRMAN BURTON: Is Sandra Hughes here? Come
2 up, ma'am, please.

3 MS. HUGHES: Good afternoon, Mr. Chairman and
4 Members of the Committee. My name is Sandra Hughes.

5 It's a pleasure to be here today. I have the
6 honor of being nominated as Deputy Director and Chief Counsel
7 for the Employment Development Department.

8 I have previously submitted a statement, and I
9 would be pleased to answer any questions you have.

10 CHAIRMAN BURTON: What protections do you have in
11 place to see that EDD records aren't compromised the way that
12 the records were by a hacker?

13 MS. HUGHES: We have in place an information
14 security officer which ensures that the employees are trained as
15 to how to handle confidential information.

16 CHAIRMAN BURTON: No. If somebody got into it,
17 it wasn't the employees.

18 What do you do to stop somebody from getting in
19 as opposed to an employee letting it out? Or if you don't know,
20 that's all right.

21 MS. HUGHES: I don't know.

22 CHAIRMAN BURTON: You ought to find out. You
23 read about the Teale Data Center?

24 MS. HUGHES: Yes.

25 CHAIRMAN BURTON: I would think that you should
26 try to find out exactly how you can, hopefully, prevent that at
27 least from happening.

28 EDD, although, as I understand it, they got

1 information, but they didn't really use it.

2 Barry, do you know anything about that?

3 MR. BREWER: I didn't hear what you said.

4 CHAIRMAN BURTON: Come on up for a minute.
5 Identify yourself for the record.

6 MR. BREWER: Barry Brewer. I'm the Deputy
7 Director of Legislation for the Employment Development
8 Department.

9 CHAIRMAN BURTON: We were just talking about
10 protections either in place or that can be put in place to make
11 sure that EDD files don't get what the Teale Data Center files
12 got?

13 And if you don't know, that's fine.

14 MR. BREWER: I did have a conversation with
15 Secretary Johnson. As you know, we're part of that, and he did
16 say there were protections in place. And he was proud to be
17 able to say that we weren't going to end up like the Teale Data
18 Center.

19 SENATOR JOHNSON: Where are records that you
20 maintain stored? Are they stored at the Teale Data Center?

21 MR. BREWER: No, they're not.

22 SENATOR JOHNSON: Another data center?

23 MR. BREWER: There's another data center.

24 SENATOR JOHNSON: One of the things that's come
25 to light is, the so-called firewalls were not in place for the
26 Controller's data. Do you know if that is the case?

27 Also another thing that's come to light is that
28 patches that are provided, that means updates, upgrades to

1 prevent security lapses are provided by the vendors who provide
2 the software out there, and that these patches were not put in
3 place.

4 CHAIRMAN BURTON: I think we've got somebody
5 here.

6 You're dismissed, Barry.

7 MR. BREWER: Thank you.

8 MR. RODRIGUEZ: Senator Burton, I'm the Chief
9 Deputy Director at EDD, Sam Rodriguez. It's a pleasure to be
10 here in front of the Committee.

11 The answer to that question technically, we --
12 EDD has two firewalls. No other department has two firewalls.

13 We also have a civil servant who, eight hours a
14 day, five days a week, is a professional hacker within EDD.

15 Every single night we batch all the records from
16 our single-client data base at 7:00 P.M. And they're cleaned
17 from 7:00 P.M. to 10:00 P.M. so they're up again at 7:00 A.M.
18 the next day. That goes on seven days a week.

19 On a quarterly basis, we bring down the systems,
20 and we look for any viruses, whether it's inside the firewall or
21 outside the firewall.

22 We have a highly extensive approach for security.

23 SENATOR JOHNSON: And your data is maintained
24 where, internally within, or do you have it in another state
25 data center?

26 MR. RODRIGUEZ: The data center is the HHS data
27 center, Health and Human Services data center.

28 SENATOR JOHNSON: And is there a shared

1 responsibility --

2 MR. RODRIGUEZ: There is a shared responsibility.

3 SENATOR JOHNSON: -- for security?

4 MR. RODRIGUEZ: That's correct.

5 SENATOR JOHNSON: What's the protocol for
6 applying the patches, as that information becomes available?

7 MR. RODRIGUEZ: You're going lower -- lower down
8 to the weeds to my expertise.

9 I can share with you that we just recently -- we
10 just recently purchased, and no other department has within
11 state government, we purchased Policy Director, which is the
12 state-of-the-art security system produced by IBM. And the data
13 center has been testing in production for the last three
14 months.

15 SENATOR JOHNSON: This alerts you to the
16 potential of hackers trying to gain access?

17 MR. RODRIGUEZ: Hackers and also authenticity for
18 protection of individual records.

19 SENATOR JOHNSON: One question that I asked you
20 don't know answer to, what are the protocols for dealing with
21 patches as that information becomes available, whether you're
22 proactively seeking out.

23 As I understand it, sometimes that's information
24 that's just provided. It's out there on the Internet. Other
25 times it's kinds of like a red alert coming from the software
26 providers.

27 MR. RODRIGUEZ: I see.

28 SENATOR JOHNSON: What's the timeframe for

1 applying a patch?

2 I also understand that it may be a problem if you
3 have ten patches suggested, and the first nine of them weren't
4 attached, and then the tenth one, that it may not work because
5 you have to do them sequentially.

6 The question is, and it's a long way from this
7 lady's qualifications, but it is a question, I think, of some
8 real interest to the Legislature.

9 MR. RODRIGUEZ: We will gladly supply for the
10 record in writing the protocols for the patch between the data
11 center and EDD.

12 SENATOR JOHNSON: Thank you.

13 CHAIRMAN BURTON: And probably, if you've got
14 such a good deal, you might want to share it with the Teale
15 Center and somebody else.

16 MR. RODRIGUEZ: We are currently doing that,
17 Senator.

18 SENATOR JOHNSON: One last question.

19 You indicated that you have basically two
20 firewalls. How long have those been in place?

21 MR. RODRIGUEZ: They've been in place for now a
22 little bit over a year.

23 SENATOR JOHNSON: Both, or one and then another?

24 MR. RODRIGUEZ: Correct.

25 SENATOR JOHNSON: So, the first one was in place
26 about a year ago, and then subsequently there's been an
27 additional firewall?

28 MR. RODRIGUEZ: That's correct. The first one



1 was an external firewall, and now we have -- we have now an
2 internal firewall.

3 SENATOR JOHNSON: This individual who is a red
4 team hacker for you, how long has that individual been --

5 MR. RODRIGUEZ: A long time, sir. I believe he's
6 been doing this the type of work for over six, seven years.

7 SENATOR JOHNSON: For you?

8 MR. RODRIGUEZ: Yes. He's been a civil servant
9 for 27 years within EDD. He's considered to be --

10 SENATOR JOHNSON: I always think of these people
11 as being teenagers.

12 Thank you.

13 MR. RODRIGUEZ: You're welcome, sir.

14 CHAIRMAN BURTON: Are you familiar with Senator
15 Kuehl's 1661?

16 MS. HUGHES: Yes, I am.

17 CHAIRMAN BURTON: Are there any legal barriers,
18 do you know of, to implementing that if the Governor decides to
19 sign it?

20 MS. HUGHES: I don't believe so. That's dealing
21 with the domestic partners and other individuals.

22 CHAIRMAN BURTON: Senator Romero.

23 SENATOR ROMERO: Thank you.

24 There's been some concern that many of the field
25 offices have been closed, and so access to filing claims right
26 now is purely via telephone, especially in agricultural areas,
27 rural areas, areas like maybe inner city garment areas. There's
28 concerns about access via Spanish, and Mandarin, Chinese.

1 Are you familiar with this concern? What
2 briefing have you done with respect to potential civil rights
3 violations with respect to the Dymally-Alatorre Bilingual
4 Services Act? And what briefings have been done to address this
5 concern?

6 MS. HUGHES: Well, no briefings have been done
7 with me, Senator, but I'd be more than happy to get that
8 information for you as to what EDD is doing.

9 SENATOR ROMERO: It hasn't come to your attention
10 yet?

11 MS. HUGHES: No.

12 SENATOR ROMERO: All right, thank you.

13 CHAIRMAN BURTON: Senator Knight.

14 SENATOR KNIGHT: No questions.

15 SENATOR KARNETTE: No questions.

16 CHAIRMAN BURTON: Do you have any family with
17 you, ma'am?

18 MS. HUGHES: Yes.

19 CHAIRMAN BURTON: Would you like to introduce
20 them?

21 MS. HUGHES: Yes, I would.

22 My daughter, Kim Keeley. Stand up. She just
23 graduated from San Jose State University.

24 My companion and friend, Dennis Chandler.

25 And then my father, who's a retired military man,
26 Charles Hughes.

27 CHAIRMAN BURTON: That got you Colonel Knight's
28 vote.

[Laughter.]

MS. HUGHES: My mother, Edna Hughes.

CHAIRMAN BURTON: Any witnesses in opposition?

Hearing none, move the nomination.

SECRETARY WEBB: Senator Karnette.

SENATOR KARNETTE: Aye.

SECRETARY WEBB: Karnette Aye. Senator Knight.

SENATOR KNIGHT: Aye.

SECRETARY WEBB: Knight Aye. Senator Romero.

SENATOR ROMERO: Aye.

SECRETARY WEBB: Romero Aye. Senator Johnson.

SENATOR JOHNSON: Aye.

SECRETARY WEBB: Johnson Aye. Senator Burton.

CHAIRMAN BURTON: Aye.

SECRETARY WEBB: Burton Aye. Five to zero.

CHAIRMAN BURTON: Congratulations.

MS. HUGHES: Thank you very much.

CHAIRMAN BURTON: Cynthia Thornton.

MS. THORNTON: Good afternoon. I'm Cynthia Thornton.

I am here to be confirmed again for the Chair of the Unemployment Insurance Appeals Board. I've been in this position for two-and-a-half years.

I've had some lovely meetings with some of you. Thank you for meeting with me. They've all been fun.

I've submitted a letter to you of accomplishments we've had over the last of couple years and what are plans are.

If there's any questions, I'd be happy to answer

1 them.

2 CHAIRMAN BURTON: It's a big day for Hastings,
3 two graduates.

4 MS. THORNTON: That would be you and me and --

5 CHAIRMAN BURTON: No, I didn't graduate. Sandra
6 Hughes. I got out early.

7 Anything bad happen since the last time you were
8 confirmed?

9 MS. THORNTON: Yes, the San Francisco Chronicle
10 wrote that article. And senator Burton, I may be holding you
11 responsible for that.

12 CHAIRMAN BURTON: I wouldn't doubt it if they
13 were attacking me.

14 Senator Johnson.

15 SENATOR JOHNSON: No questions.

16 CHAIRMAN BURTON: Senator Romero.

17 SENATOR ROMERO: No questions.

18 CHAIRMAN BURTON: Senator Karnette.

19 SENATOR KARNETTE: No questions.

20 CHAIRMAN BURTON: Do you have, and I think you
21 do, any family with you?

22 MS. THORNTON: Yes, I do. I would like my sons,
23 Nick and Alex, to stand. My twin sons, and they are eight years
24 old, and they're just finishing up third grade in public school
25 in San Diego.

26 I'd also like to introduce some of our staff
27 that's here.

28 CHAIRMAN BURTON: Do you always dress them the

1 same?

2 MS. THORNTON: They dress themselves. They
3 started doing that real early. I couldn't stop them.

4 We have our Executive Director and Chief
5 Administrative Law Judge, J. Arcellana, and our Chief Counsel,
6 Rob Hilton here, in case anybody had any hard questions that I
7 wasn't able to answer.

8 CHAIRMAN BURTON: Part of the review process on
9 the creation of that Labor Workforce Development Agency, the
10 Appeals Board has requested they report directly to the new
11 Agency Secretary rather than through EDD. Why? What was the
12 point?

13 MS. THORNTON: We decide appeals from EDD. And a
14 lot of our decisions say EDD was wrong. It probably is not a
15 good idea for us to be under EDD in those circumstances. That's
16 number one.

17 Number two is --

18 CHAIRMAN BURTON: We asked that during the
19 hearing; didn't we? I vaguely remember the answer.

20 Any witnesses in opposition?

21 Hearing none, move the nomination.

22 SECRETARY WEBB: Senator Karnette.

23 SENATOR KARNETTE: Aye.

24 SECRETARY WEBB: Karnette Aye. Senator Knight.

25 SENATOR KNIGHT: Aye.

26 SECRETARY WEBB: Knight Aye. Senator Romero.

27 SENATOR ROMERO: Aye.

28 SECRETARY WEBB: Romero Aye. Senator Johnson.

1 SENATOR JOHNSON: Aye.

2 SECRETARY WEBB: Johnson Aye. Senator Burton.

3 CHAIRMAN BURTON: Aye.

4 SECRETARY WEBB: Burton Aye. Five to zero.

5 CHAIRMAN BURTON: Thank you and congratulations.

6 MS. THORNTON: Thank you very much. It's a real
7 pleasure.

8 [Thereupon this portion of the
9 Senate Rules Committee hearing
10 was terminated at approximately.
11 2:00 P.M.]

12 --ooOoo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June, 2002.

Evelyn J. Mizak
EVELYN J. MIZAK
Shorthand Reporter

458-R

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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

GLORIA A. HENRY, Warden
Valley State Prison for Women, Chowchilla

ROY MABRY, State President
Association of Black Correctional Workers

SUZANNA AGUILERA-MARRERO, Association President
Chicano Correctional Workers Association

CINDY GREER, Steward
CSEA, Valley State Prison

JOHN C. ANDERSON
California Correctional Supervisors Organization

FRANK SANDERS, JR.
Association of Black Correctional Workers
San Joaquin Valley

1 STELLA DELGADO
Victim Services Center

2
3 RICHARD TATUM, State President
California Correctional Supervisors Organization

4 BARBARA POWERS
5 Correctional Institutions Committee, CSEA

6 JAN FLANIGAN, Community Resources Manager
7 Central California Women's Facility

8 CHARLES BABILLA, Prison Industries Manager
CCWF, Valley State Prison

9 VITKA EISEN, M.D.
10 Walden House, Inc.

11 ROBERT J. HERNANDEZ, Warden
12 R.J. Donovan Correctional Facility

13 JESSE R. NAVARRO, San Diego Resident
Hispanic Chamber of Commerce, San Diego County

14 ART MARENO, Correctional Lieutenant
15 R.J. Donovan Correctional Facility

16 RAYMOND DIN, Regional Vice President
17 Local Chapter, CCWA

18 TOMMY E. VAUGHN, Warden
19 Chuckawalla Valley State Prison

20 JAMES R. NATIVIDAD
CCSO

21 VIRGINIA MARI GOODMAN
22 CSEA Local 1000, SEIU

23 DIANNE McDOUGAL, President
24 Employees Association, Chuckawalla Valley State Prison

25 JOHN CULTON, M.D., Chief Medical Officer
CVSP

26 IKE WILLIAMS
27 ABCW
28

1 JOHN FLAHARTY, Past Chapter President
2 CCPOA

3 MICHAEL G. YARBOROUGH, Warden
4 California Correctional Institution

5 MARIANA TEEL, Mayor Pro Tem
6 City of Tehachapi

7 NICK R. MARTINEZ, Vice President and Chief Steward
8 CSEA/SEIU Local 1000
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointees, Gloria Henry, Valley State Prison, Chowchilla.

MS. HENRY: Good afternoon, honorable Chair, Vice Chair, and other Committee Members.

My name is Gloria Henry. I'm the Warden at Valley State Prison for Women in Chowchilla, California, where I have served for the last 14 months, with my official appointment by Governor Gray Davis January 3rd, 2002.

I would publicly acknowledge and express my sincere appreciation to the professional staff of Valley State Prison for Women for all of their help and support during this last year. And I would also like to thank the Committee for giving me the opportunity to sit before you.

I bring to this position 25 years of experience working for the Department of Corrections. Twenty of those years I've been responsible for the supervision, classification, programming and managing of the female population. I believe my experience, education, training and correctional expertise has adequately prepared me to assume the position of Warden.

I am here today to respond to any questions that you may have.

CHAIRMAN BURTON: Senator Johnson.

SENATOR JOHNSON: No questions.

CHAIRMAN BURTON: Senator Karnette.

SENATOR KARNETTE: No questions.

CHAIRMAN BURTON: Should there be different kinds

1 of rules at a women's facility than a men's facility?

2 MS. HENRY: I believe that there -- --

3 CHAIRMAN BURTON: Not different kinds, but
4 different kinds.

5 [Laughter.]

6 CHAIRMAN BURTON: If you follow my drift.

7 MS. HENRY: I believe there are needs, that some
8 of the rules and regulations are different for women, that are
9 more gender responsive.

10 But at the same time, I think that we also need
11 to be careful in terms of the rules that are different that may
12 open us up for some litigation on the part of the male inmates.

13 I think the Department over the years, with the
14 growth of the women's population, they have begun to look at
15 policies and procedures that impact the women's population. So
16 yes, I think there is a need to make some differences.

17 CHAIRMAN BURTON: In your experience, what do you
18 think should be done to help keep women from returning to
19 prison?

20 First of all, basically the women in prison, at
21 least as you know it, what are the basic crimes that they commit
22 mostly?

23 MS. HENRY: Most of their crimes are committed as
24 a result of substance abuse.

25 CHAIRMAN BURTON: Drug related?

26 MS. HENRY: Yes. And that has caused a
27 tremendous growth in the population.

28 CHAIRMAN BURTON: Drug abuse and spousal abuse?

1 MS. HENRY: Well, I guess that probably would
2 kind of go in there a little bit, but I think primarily it's
3 drug abuse. And of course, as a result of the drug abuse,
4 oftentimes they put themselves in positions where they are
5 physically abused, whether it's by a spouse or a significant
6 other.

7 CHAIRMAN BURTON: Their drug crimes, possession
8 and utilization of drugs, or they did something illegal because
9 they were on drugs?

10 MS. HENRY: A lot of it. A lot of their
11 commitment offenses are as a result of drug usage and/or
12 possession or sale, or committing other crimes in order to
13 support their drug habits, such as petty theft, burglaries, and
14 that kind of stuff.

15 CHAIRMAN BURTON: Except for the spousal
16 situations, are many women in on violent crimes? Except for,
17 shall we say, women who, you know, attack or kill their spouses
18 or significant others, are they in there for, like many of the
19 men, drive-by shootings, violent crimes things, of that sort?
20 Or mostly for property crimes and stuff like that?

21 MS. HENRY: The largest percentage is for
22 property crimes. We do have them there that were gang
23 affiliated and were participants in drive-bys, and that number
24 is, to some degree, growing.

25 CHAIRMAN BURTON: They were actual participants,
26 or they were involved in the gang, and the gang was involved in
27 it?

28 MS. HENRY: You mean in terms of participating,

1 actual gang members?

2 CHAIRMAN BURTON: I mean, are they in the car;
3 are they out of the car; they were driving it? You know, active
4 versus passive.

5 I'm just trying to learn something. It really
6 doesn't have a hell of a lot to do with the job you're doing.

7 MS. HENRY: In most of the cases that I review in
8 classification, they were participants. They were not, say, the
9 shooters.

10 CHAIRMAN BURTON: Active?

11 MS. HENRY: Active participants in the car.

12 CHAIRMAN BURTON: They're mostly younger women, I
13 guess, in that deal?

14 MS. HENRY: Yes.

15 CHAIRMAN BURTON: Do you have any family here
16 you'd like to introduce?

17 MS. HENRY: Yes, I do, quite a few.

18 Well, my husband is over there, James Henry. And
19 I think he offered up his seat to my mother --

20 CHAIRMAN BURTON: Very smart man.

21 [Laughter.]

22 MS. HENRY: My sister, my son, my sister in the
23 back, my brother, my nephew, my sister-in-law.

24 CHAIRMAN BURTON: We're going to try to get you
25 out quick and empty this room.

26 [Laughter.]

27 CHAIRMAN BURTON: Do you have any questions,
28 Senator Knight?

1 SENATOR KNIGHT: No, no.

2 CHAIRMAN BURTON: Senator Romero.

3 SENATOR ROMERO: No.

4 CHAIRMAN BURTON: Witnesses in support, briefly.
5 And I'm very serious, briefly. We have a very full calendar,
6 and there has been no opposition shown to the wardens.

7 Brother Mabry, if you will.

8 MR. MABRY: Thank you, Senator.

9 Chairman Burton, Committee Members, and
10 Appointments Secretary Sabelhaus, my name Roy Mabry. I'm the
11 State President, Association of Black Correctional Workers.

12 I'm here to support Ms. Henry today in very
13 clearly the confirmation that's going to be done shortly.

14 I know that we always get into the areas of what
15 goes on with the institution within supervision and things that
16 occur with inmates, but there's some things that occur with
17 employees that I don't ever hear us talk about in these meetings
18 in terms of what wardens actually do to assist people on
19 occasions.

20 I'm happy that I've worked under Ms. Henry. She
21 was my sergeant back in the '70s. I know I don't have the
22 appearance of an older person.

23 [Laughter.]

24 MR. MABRY: And I was actually a single parent
25 in the '70s, and my daughter -- all of a sudden, I became a
26 single parent. My hours didn't accommodate what I needed to do
27 for parenting, and Ms. Henry adjusted the hours to where I saved
28 a fortune in babysitting. Now my daughter's an actual employee

1 and officer with the Department of Corrections, one of those
2 highly paid officers, by the way, Senator Burton.

3 With that, I just wanted to share that small
4 amount of history in terms of things that people do to make that
5 employee adjustment to make things go the way they actually
6 should be going when somebody's working and doing things they
7 should be doing.

8 She was my lieutenant, she was my captain, and
9 then she moved on around the state, working at other places.
10 It's not often you get a chance to share your personal
11 experience based on wardens. Normally, you get resumes and
12 history based on what people pass on to you about their work
13 habits. But in this case, it's totally different.

14 Also, at the same time, I'd like to share that
15 equal support for the other wardens, which are Mr. Robert
16 Hernandez from Donovan State Prison. Hopefully he will be
17 confirmed without any delays. Also Mr. Thomas Vaughn and
18 Mr. Michael Yarborough.

19 CHAIRMAN BURTON: Thank you --

20 Actually, there are two questions that I had
21 forgotten to ask, and your testimony reminded me. I'm sure
22 she's happy you came up.

23 [Laughter.]

24 CHAIRMAN BURTON: What's the status of the
25 officers work stations that were negotiated, I guess, last year
26 at the prison?

27 MS. HENRY: The status of the officers work
28 station is that they are in the process of being constructed.

7
1 One of them has been constructed, minus the security glass
2 because they were not able to purchase it until they got the
3 stations up in order to get the right measurements. But the
4 stations are being done right now.

5 CHAIRMAN BURTON: Are you involved in the
6 disciplinary process of the personnel at the prison? Do you
7 oversee it? Do you sit in? Do you direct it? How does that
8 work?

9 MS. HENRY: Basically when an allegation is made
10 against an employee, depending on the severity of the
11 allegation, we will do an internal investigation, what they call
12 a Category I investigation, which is done by a sergeant or a
13 lieutenant at the institution.

14 If it's a serious, something that could, in fact,
15 end up in court, then it's referred out to the Office of
16 Internal Affairs, and the investigation is done by one of their
17 agents.

18 If the charges or the allegations are sustained
19 based on the investigation, the package comes back in, the
20 completed investigation, and I would make a penalty
21 recommendation. That penalty recommendation then gets reviewed
22 through my chain of command, which is the Regional Administrator
23 up to the Director's office.

24 It also goes through Legal for them to review and
25 determine whether or not the penalty is too severe, and they do
26 comparisons to other cases that are similar, and whatever the
27 penalty recommendation is, to make sure that we're not killing
28 somebody else and letting somebody else off fairly easily, and

1 it's the same kind of offense.

2 Once that's done, if they support the
3 recommendation then it comes back to the institution to be
4 served on the employee.

5 CHAIRMAN BURTON: How often when a warden
6 recommends discipline do they reverse it? I mean, do they tend
7 to go along?

8 MS. HENRY: For the most part, because
9 we're required to do --

10 CHAIRMAN BURTON: You're the ones there that kind
11 of know what went on.

12 MS. HENRY: True. What they may have is, what
13 they'll do is, they'll call you and ask you some questions about
14 it to kind of just give you a different perspective.

15 CHAIRMAN BURTON: Thank you.

16 Other witnesses in support?

17 MS. AGUILERA-MARRERO: Good afternoon. Suzanna
18 Aguilera-Marrero on behalf of the Chicano Correctional Workers
19 Association.

20 I will cut to the chase so I don't take up too
21 much of your time.

22 The Association has elected to support all four
23 of candidates coming up for confirmation, and we encourage you
24 to also confirm them.

25 Thank you very much.

26 CHAIRMAN BURTON: Thank you very much, ma'am.

27 Next.

28 MS. GREER: Good afternoon. My name's Cindy

1 Greer. I'm a teacher and a job steward for CSEA at Valley State
2 Prison for Women, working with Ms. Henry.

3 I urge the Committee to endorse Ms. Henry.
4 There's just a couple of issues we need to note. We need to
5 continue working on the 4-C status that is contractual, that it
6 be given to our members, and that our members do get access to
7 representation when they request it. There's been one instance
8 when it wasn't given when requested.

9 The Warden is working with us to resolve these
10 issues, and again, I urge you to endorse her, and I look forward
11 to continuing to work with her on these issues and any other
12 future issues that arise.

13 SENATOR KARNETTE: What's a 4-C?

14 MS. GREER: It is an exempt status of salaried
15 employees. There were people who were hourly that Unit Three,
16 the teachers, the librarians, have been given 4-C status as of
17 July 1, 1999. Because of the wording of the contract, there is
18 a different perception of how this is to be enacted. So, there
19 are issues that arise because of that.

20 SENATOR KARNETTE: Thank you.

21 CHAIRMAN BURTON: Thank you.

22 Next.

23 MS. GREER: Thank you.

24 MR. ANDERSON: Good afternoon. My name is John
25 Anderson. I'm the Chapter President of the California
26 Correctional Supervisors Organization at Valley State Prison.

27 I want you to know that we support Ms. Henry for
28 our warden.

1 CHAIRMAN BURTON: Thank you.

2 Next.

3 MR. SANDERS: My name is Frank Sanders. I'm the
4 Chairperson of the San Joaquin Valley Chapter of the Association
5 of Black Correctional Workers.

6 I'm here to encourage this Committee's support
7 for Ms. Henry as Warden at Valley State Prison for Women.

8 Thank you.

9 CHAIRMAN BURTON: Thank you, sir.

10 Next.

11 MS. DELGADO: Good afternoon. My name is Stella
12 Delgado. I'm representing Victim Services Center for Madera
13 County.

14 I met Ms. Henry about year ago during a Victim
15 Services luncheon. I work extensively with a lot of social
16 service and nonprofit agencies in our county of Madera. And I'm
17 here to share with you the tremendous work that she has done for
18 our community. We were very impressed with the generosity, the
19 contributions, and her support within her own institution to be
20 very supportive of community functions, events, everything from
21 Shoes That Fit Programs, to helping battered women, to children
22 that are needy, also getting involved in crime prevention
23 programs, police activity leagues, working with different
24 organizations such as the Cancer Society and Parents United
25 groups.

26 Within the institution, many of the vocational
27 programs have contributed greatly to the community. We're
28 impressed with how much has been done just in her first year of

1 leadership. We're sometimes very much in awe of it, and it
2 comes up during different meetings and different opportunities,
3 to discuss how we can continue working with them, both of the
4 state prisons that are in Madera County.

5 Our own Victim Services has benefitted greatly
6 from a lot of the work that has been done at Valley State Prison
7 under her leadership. We receive very generous support
8 monetarily, and we also receive very much support in terms of
9 time.

10 We have five staff members that work at Valley
11 State Prison that donate their time on a monthly basis to help
12 victims of crime in our community, to staff a 24-hour crisis
13 line, to go into court and to sit with victims, and go through
14 that process with them, and be there in the middle of the night
15 during crime scenes, working with law enforcement, and going --
16 basically being at hospitals and holding their hands.

17 So, we were very, very excited when we learned in
18 March that Ms. Henry was interested in being a volunteer for our
19 program as well. And so, she completed 66 hours of very
20 extensive training to be a paraprofessional counselor. We're
21 very eager to have the opportunity to work with her.

22 We offer our full support, and are looking
23 forward our continued relationship with her, and the community
24 is very, very much appreciative of everything that she has
25 done.

26 CHAIRMAN BURTON: Thank you very much.

27 MS. DELGADO: You're welcome.

28 CHAIRMAN BURTON: Next.

1 Could I see a little show of hands here as to how
2 many more are coming up? Okay.

3 MR. TATUM: Good afternoon, Committee. I'm
4 Richard Tatum. I'm the State President of the California
5 Correctional Supervisors. I've been here a couple times.

6 Basically, I've known Ms. Henry since she was
7 brand-new correctional officer working for me in the '70s. She
8 started from bottom and worked her way up.

9 We're supportive of her. She's supportive of us.
10 She's the type of person that has the integrity and the
11 knowledge and experience that's needed for a warden.

12 With that, we support her. Thank you.

13 CHAIRMAN BURTON: Thank you, sir.

14 Yes, ma'am.

15 MS. POWERS: I'm Barbara Powers. I work at Mule
16 Creek State Prison. I'm a member of the Correctional
17 Institutions Committee for CSEA.

18 And on behalf of our members and our employees
19 that work at Valley State Prison, we would like to encourage you
20 to endorse her. She has been a substantial improvement in their
21 eyes, and we're very happy to have her.

22 CHAIRMAN BURTON: Thank you, ma'am.

23 Next.

24 MS. FLANIGAN: My name's Jan Flanigan. I'm the
25 Community Resources Manager at the Central California Women's
26 Facility.

27 I just really wanted an opportunity to sit down
28 for a minute because I was standing up for so long.

[Laughter.]

MS. FLANIGAN: While I'm here, I suppose I should say a few nice words.

I worked with Gloria for ten years while she was at the Central California Women's Facility. During that time, I learned how charitable she is with her time and with her money. And people don't always know that right away because she doesn't always try and work things into a conversation. She doesn't talk about it. She doesn't boast about it. She just does it. And she volunteers a lot of her time with the community. She doesn't do it because of her position. She doesn't do it to be politically correct.

I think if Gloria were a checker at a grocery store, she would still do that. She would still donate her time and her money to charitable organizations. She just does it because it's the right thing to do, and that's who she is.

The community is very lucky to have her.

CHAIRMAN BURTON: Thank you.

Next.

MS. BABILLA: Chair and Members, my name is Charles Babilla. I'm the Prison Industries Manager at both Central California Women's Facility and Valley State Prison for Women.

I met Ms. Henry in 1995. She was then Associate Warden, and Ms. Henry is very supportive of Prison Industries and other programs. I've seen what she's done to us at both Valley State Prison and Central California Women's Facility. Most of all, she has a lot of ethics and values in life, and

1 she's a very family person.

2 Her humor is tremendous, even during any kind of
3 circumstances. You know, her humor really bring a lot of -- you
4 know, a breath of fresh air to her staff.

5 Prison Industries Authority is in support of
6 Ms. Henry for Warden.

7 CHAIRMAN BURTON: Thank you.

8 DR. EISEN: Good afternoon. I'm Dr. Vitka
9 Eisen. I'm the Associate Director of Criminal Justice Programs
10 for Walden House. Walden House is the contracted substance
11 abuse services provider at Valley State Prison for Women, and
12 we're here to speak on behalf of Walden House in support of
13 Ms. Henry's confirmation.

14 We have a program that serves 506 women at Valley
15 State Prison for Women, and that makes it one of the largest
16 in-custody substance abuse treatment programs in the country.
17 Managing a program of such magnitude requires a great deal of
18 commitment and vision on the part of the warden, and Ms. Henry
19 has amply demonstrated great vision and leadership in her work
20 with us. She has invited our managers into her management team,
21 which helps for the seamless integration of services, and it
22 helps build a great sense of comraderie and team.

23 Ms. Henry's a get-it-done, problem solving kind
24 of a warden. She often attends events at the substance abuse
25 treatment program.

26 She's also devoted a great deal of her career to
27 working with women, working with incarcerated women, and that's
28 a unique field, and it requires a special kind of person.

1 CHAIRMAN BURTON: And you're in support?

2 DR. EISEN: Totally.

3 Thank you very much.

4 SENATOR JOHNSON: I recognize that standing too
5 long can be very tiresome. Sitting too long can be very
6 tiresome.

7 I'd like to move the nomination.

8 DR. EISEN: Thank you.

9 CHAIRMAN BURTON: Could those who want to testify
10 come up and just give your name and organization for the record
11 in support, please. Are there any others? No? That was it.

12 Boy, you know how to do it.

13 [Laughter.]

14 CHAIRMAN BURTON: Call the roll, please.

15 SECRETARY WEBB: Senator Karnette.

16 SENATOR KARNETTE: Aye.

17 SECRETARY WEBB: Karnette Aye. Senator Knight.

18 SENATOR KNIGHT: Aye.

19 SECRETARY WEBB: Knight Aye. Senator Romero.

20 SENATOR ROMERO: Aye.

21 SECRETARY WEBB: Romero Aye. Senator Johnson.

22 SENATOR JOHNSON: Aye.

23 SECRETARY WEBB: Johnson Aye. Senator Burton.

24 CHAIRMAN BURTON: Aye.

25 SECRETARY WEBB: Burton Aye. Five to zero.

26 CHAIRMAN BURTON: Congratulations, Warden.

27 MS. HENRY: Thank you.

28 CHAIRMAN BURTON: Robert Hernandez.

1 MR. HERNANDEZ: Good afternoon, Senators. I have
2 a brief statement.

3 Senator Burton and Rules Committee Members, it's
4 an honor to appear before you today. I am Robert J. Hernandez,
5 Warden at the Richard J. Donovan Correctional Facility in San
6 Diego, California.

7 My career began with the Department of
8 Corrections in 1974 at Deuel Vocational Institution. Since that
9 time I have had the opportunity to work at five different
10 institutions. I have held many diverse positions during my 28
11 years of experience, from a correctional officer at Deuel
12 Vocational Institution to my current position as Warden at
13 Richard J. Donovan Facility.

14 I would like to take this time to acknowledge the
15 staff at Deuel Vocational Institution, San Quentin State Prison,
16 North Kern State Prison, Salinas Valley State Prison, and of
17 course, the staff at Richard J. Donovan. Without their support
18 and loyalty to the Department of Corrections, I truly believe
19 that I would not be sitting here before this Committee today.

20 This concludes my opening remarks. I'm available
21 to answer any questions or concerns you might have.

22 SENATOR JOHNSON: Your institution is operating
23 at 235 percent of capacity?

24 MR. HERNANDEZ: I checked my figures yesterday,
25 Senator, and I believe it's more like 210. My current
26 population is 4600.

27 And I believe the information is incorrect. I
28 believe the information that you folks might have says it's

1 5600. I'm not quite sure.

2 But my population currently is 4600 as of
3 yesterday.

4 SENATOR JOHNSON: Forty-six hundred.

5 MR. HERNANDEZ: Yes.

6 SENATOR JOHNSON: I think the figures we were
7 supplied said 5200.

8 How does that compare, the 210 percent, compare
9 with system wide?

10 MR. HERNANDEZ: Pardon?

11 SENATOR JOHNSON: How does that compare with
12 system wide?

13 MR. HERNANDEZ: I'm really not sure what the
14 statistics are at -- most of the prisons are either at 190
15 percent or a little over 200.

16 SENATOR JOHNSON: Senator Knight.

17 SENATOR KNIGHT: No questions.

18 SENATOR JOHNSON: Senator Karnette.

19 SENATOR KARNETTE: No questions.

20 SENATOR JOHNSON: Senator Romero.

21 SENATOR ROMERO: Thank you.

22 Let me just ask you, I was reading in your
23 answers that the average reading level of the inmates in the
24 institution is fifth grade.

25 What are your education programs?

26 MR. HERNANDEZ: We have several education
27 programs. We have, of course, we have ABE I, which is Basic
28 Adult Education. We have many vocational programs. We have

1 English as a second language program.

2 We don't offer any college courses, but we have
3 reading programs where everybody can get their GED or high
4 school diploma. We're an accredited high school, Otay Mesa High
5 School.

6 SENATOR ROMERO: Are there waiting lists for
7 these, and are they offered throughout the year, throughout the
8 week, certain times? Can you just describe it a little bit?

9 MR. HERNANDEZ: Yes.

10 There is a very small waiting list, anywhere from
11 40 to 50 inmates. We currently have two shifts of education,
12 two shifts of 4-10-40. So, we have education going seven days a
13 week at Richard J. Donovan. Our education department runs seven
14 days a week.

15 CHAIRMAN BURTON: Do you have any of the, shall
16 we say, better educated inmates that are there? Do you try to
17 see if they're willing to volunteer and help?

18 You know, fifth grade educational level means
19 that if they ever get out, they're probably going to be back
20 pretty quick.

21 MR. HERNANDEZ: Yes. We do have inmates
22 volunteer to help other inmates how to read, and that's a
23 voluntary basis.

24 CHAIRMAN BURTON: Do you encourage that?

25 MR. HERNANDEZ: Yes, I do.

26 CHAIRMAN BURTON: Explain to me, when we say that
27 a prison's 200 percent capacity, the prisons were initially
28 built for two per cell?

1 MR. HERNANDEZ: No. My prison was built for
2 2,200 inmates, and it was built in 1987. Since then, we've
3 overcrowded it up to the percentage that we are today.

4 CHAIRMAN BURTON: Was it built with the thought
5 in mind two inmates a cell or one?

6 MR. HERNANDEZ: I believe it was built for the
7 thought of two inmates a cell.

8 CHAIRMAN BURTON: Two inmates a cell?

9 MR. HERNANDEZ: Yes.

10 CHAIRMAN BURTON: So, what's the percentage you
11 are now?

12 MR. HERNANDEZ: I'm not --

13 CHAIRMAN BURTON: Let's say it's 200 percent;
14 makes it easier for me.

15 That means that basically every cell has two
16 people? Then where are the other --

17 MR. HERNANDEZ: Well, I have three gymnasiums
18 that also have inmates in those.

19 CHAIRMAN BURTON: So, every cell's got two
20 people?

21 MR. HERNANDEZ: Not every cell. We have some
22 inmates that refuse to double cell. I think I have 140 cells
23 that are not doubled up right now because inmates are refusing
24 to double cell.

25 CHAIRMAN BURTON: So, you've got 140 out of --
26 let's again make it easy -- 2,000, so then you've got another
27 2,000 that are in the gym and somewhere else?

28 MR. HERNANDEZ: I have about 850 inmates in the

1 gymnasiums, all three of them.

2 CHAIRMAN BURTON: What are they doing, given the
3 tight budget? It's my understanding there was fairly shoddy
4 construction on the prison when it started, so it's in need of
5 repairs.

6 And I was going to say, I know one of the things
7 that always gets cut back is maintenance, because they haven't
8 yet joined the CCPOA.

9 How do you deal with needed repairs under the
10 tight budget situation?

11 MR. HERNANDEZ: Well, it's very difficult. I'm
12 actually 12 positions short in my maintenance department.

13 But we do have a preventative maintenance
14 program, and they do the best that they can. My understanding,
15 my staff tell me since I've been there that they call it value
16 engineering, apparently, when they built prison. And so, for
17 its age, it is -- there is some disrepair for the institution.
18 So the physical plant is deteriorating.

19 But we're doing everything we can to fix the
20 problems as soon as we can. We get support from the
21 Department. But like everything else, it takes time, and there
22 are different priorities in the Department to get funding to get
23 these things fixed.

24 CHAIRMAN BURTON: As I understand it, backed up
25 sewage sometimes ends up spilling into the dental clinic, which
26 I guess all in all is not the best way to fix cavities.

27 What are you doing trying to deal with that? I
28 guess it's tough to move the dental clinic because they have to

1 have a lot of pipes for both water and air, and things like
2 that.

3 MR. HERNANDEZ: Well, I have five dental clinics,
4 and actually about a month so ago, I went and visited all five
5 of them myself, because, you know, I've been at this institution
6 for almost six months. I've heard a lot of complaints about the
7 dental department, the fact that there was a sewage back-up.

8 And apparently, what my staff apprised me of was
9 that apparently our sewage system was connected directly to our
10 dental clinics. So, since they brought that to my attention,
11 we've rerouted the system from the dental clinics. So, there
12 shouldn't be a back-up any more in the future.

13 There was also a problem with the spillage. Of
14 course, it ruined all the tile, and of course we had to replace
15 the tile. And of course, that backed up some of the dental
16 appointments that the inmates had.

17 CHAIRMAN BURTON: Thank you.

18 Do you have any family here, sir?

19 MR. HERNANDEZ: I believe so. I don't know if
20 they made it into the room. Let me see if I can find them.

21 My wife Julie. My son Robert Hernandez, Jr. My
22 daughter Theresa. I've got two brother-in-laws I can't shake;
23 they're here, too. That's my brother-in-law Frank Placeras and
24 his brother Carlos Placeras.

25 CHAIRMAN BURTON: Witnesses in support, please.

26 We all ready have on record Black Correctional
27 and the Chicano Correctional.

28 MR. NAVARRO: Good afternoon, Mr. Chairman,

1 ladies and gentlemen. My name is Jesse Navarro. I am a
2 resident of San Diego County. I've lived there for 41 years.

3 I've been involved in various community business
4 and law enforcement boards and commissions, and so forth. And I
5 have had the privilege of meeting and knowing Mr. Hernandez for
6 the last six months.

7 On behalf of many community business and law
8 enforcement people in San Diego County, I'm here simply to
9 express our total support. He's done an exceptional,
10 exceptional job in San Diego County, not only inside the
11 institution but in the community. In the short time he's been
12 there, he's taken time to meet the law enforcement people, to
13 meet the community and the business people, and he is to be
14 commended for that.

15 This is only an initial example of the excellent
16 job that he's been doing, and the excellent job that
17 Mr. Hernandez will do at our local institution.

18 Thank you for your support, and we support him
19 100 percent. Thank you.

20 CHAIRMAN BURTON: Thank you.

21 Do you happen to know who Richard J. Donovan was?

22 MR. NAVARRO: You know, all I remember,
23 Mr. Chairman, is that he's, you know, one of the founders, but I
24 really don't know.

25 CHAIRMAN BURTON: No, he used to be in the State
26 Assembly, then he became a judge.

27 MR. NAVARRO: Thank you.

28 CHAIRMAN BURTON: There you go. A little bit of

1 history.

2 Did you know who he was?

3 MR. HERNANDEZ: Are you asking me? I didn't know
4 him personally, but my staff --

5 CHAIRMAN BURTON: You always wonder who this
6 person was.

7 MR. HERNANDEZ: Actually, my understanding was
8 that he was a big supporter of having the prison built there.

9 CHAIRMAN BURTON: He probably was, and then he
10 filled it up as soon as me got on the bench.

11 [Laughter.]

12 MR. NAVARRO: Thank you very much.

13 CHAIRMAN BURTON: Thank you.

14 Next, please.

15 MR. TATUM: Hello, Committee.

16 I'm Richard Tatum, State President of the
17 California Correctional Supervisors Organization.

18 Mr. Hernandez also was a correctional officer who
19 worked for me in 1974 when I was his supervisor. He's worked
20 his way up through the ranks, and we fully support him in his
21 confirmation.

22 Thank you.

23 CHAIRMAN BURTON: Next.

24 MR. MARENO: Good afternoon, Senator Burton and
25 staff. My name is Art Mareno. I'm presently a lieutenant at
26 Richard J. Donovan Correctional Facility. I've been working for
27 the Department of Corrections for approximately 17 years.

28 And on behalf of 1400 employees that we have

1 there, approximately, I believe a good leader, you need loyalty
2 in that leader to show them the correct or pro guidance. And we
3 believe if we could fit all 1400 employees in here, I believe
4 everyone would say that we want Robert Hernandez as our Warden,
5 Richard J. Donovan Correctional Facility, because we are loyal
6 to him, and he's going to have our loyalty.

7 I highly suggest to appoint him for not only the
8 morale and guidance that he will provide us, but also for the
9 state in general.

10 CHAIRMAN BURTON: Thank you.

11 MR. MARENO: Thank you.

12 CHAIRMAN BURTON: Next.

13 MS. POWERS: I'm Barbara Powers. I'm a Member of
14 the CIC Committee within CSEA.

15 And I wasn't expecting today to be speaking for
16 Warden Hernandez. Bobby Hall was scheduled, and due to an
17 on-the-job injury in the kitchen, he's an employee at Donovan,
18 he was unable to attend.

19 And we just wanted to make sure the Warden was
20 aware; however, we didn't speak to him directly about it. We
21 went through the Director.

22 So, we wanted to offer our support on behalf of
23 the members and CSEA.

24 CHAIRMAN BURTON: Thank you.

25 Next.

26 MR. DIN: My name is Ray Din, representative of
27 CCWA at the local chapter at Donovan.

28 We're here in support for Mr. Hernandez.

1 Good luck.

2 CHAIRMAN BURTON: Any other witnesses in support?

3 Let me ask you a question. How does one become a
4 warden, besides getting appointed? Is there a certain criteria?

5 MR. HERNANDEZ: Well, I don't know of any certain
6 criteria, but most of the wardens that I know that have made
7 warden usually just work their way up through the ranks. Most
8 of them come through custody, some come through the business
9 service side of the Department.

10 CHAIRMAN BURTON: You get at a certain level, and
11 then you'd be eligible for warden?

12 MR. HERNANDEZ: Yes.

13 CHAIRMAN BURTON: Could they be jumped over?

14 MR. HERNANDEZ: Sure.

15 CHAIRMAN BURTON: They could be a sergeant, and
16 then become a warden and jump over someone else?

17 MR. HERNANDEZ: Yes. It's an appointed position,
18 sure, but that usually doesn't happen.

19 CHAIRMAN BURTON: Any required educational
20 qualifications or anything?

21 MR. HERNANDEZ: No, just a high school diploma as
22 far as I know.

23 SENATOR KNIGHT: Those sergeants, he worked for
24 the sergeants. They didn't want to become wardens, so they
25 pushed it off on him.

26 [Laughter.]

27 CHAIRMAN BURTON: There's people like that, you
28 know.

1 Witnesses in opposition? Hearing none, call the
2 roll on the nomination.

3 SECRETARY WEBB: Senator Karnette.

4 SENATOR KARNETTE: Aye.

5 SECRETARY WEBB: Karnette Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator Romero.

8 SENATOR ROMERO: Aye.

9 SECRETARY WEBB: Romero Aye. Senator Johnson.

10 SENATOR JOHNSON: Aye.

11 SECRETARY WEBB: Johnson Aye. Senator Burton.

12 CHAIRMAN BURTON: Aye.

13 SECRETARY WEBB: Burton Aye. Five to zero.

14 CHAIRMAN BURTON: Congratulations, Warden.

15 MR. HERNANDEZ: Thank you very much.

16 CHAIRMAN BURTON: Thomas Vaughn, Chuckawalla
17 State Prison.

18 MR. VAUGHN: Senator Burton, Members of the
19 Committee, thank you for the opportunity to meet with you today
20 and present my credentials for confirmation as Warden of
21 Chuckawalla Valley State Prison.

22 With your approval, I have a brief prepared
23 statement. Firstly, I'd like to publicly acknowledge the staff
24 at Chuckawalla Valley State Prison who have assisted me in
25 preparing for today and for their support.

26 I began my career 28 years ago as a correctional
27 officer at Deuel Vocational Institution, completing assignments
28 over the years at nine different prisons. I've worked all

1 custody levels at both male and female facilities. My
2 assignments through the ranks have include a variety of
3 management positions. Prior to my current appointment, I served
4 as the Chief Deputy Warden at both the California Correctional
5 Institution and the California Substance Abuse Treatment
6 Facility.

7 Since my appointment as Warden at Chuckawalla in
8 June of last year, my management focus has been ensuring public
9 safety, improving communications with both the staff and inmate
10 population, fully implementing our substance abuse program,
11 improving our visiting operations, and cultivating a strong
12 relationship with Health Care Services.

13 I am committed to maintaining and expanding our
14 effective partnership with local community, law enforcement
15 agencies, and the courts.

16 I welcome the opportunity to answer the
17 Committee's questions.

18 CHAIRMAN BURTON: Before we go any further, do
19 you have any family here?

20 MR. VAUGHN: Yes, sir, I do. Thank you.

21 My lovely wife, Cynthia. Both my brothers, John
22 and Mike and their families. My daughter, Cindy and her
23 husband Clayton. And I think I have maybe nephews and nieces
24 out there as well.

25 Thank you.

26 CHAIRMAN BURTON: I think you're still running
27 second to Warden Henry. She beat you by four hands.

28 It's pretty hot down there; right? And your air

1 conditioning's not really the best.

2 What can you do to improve air flow during the
3 hot months? And I guess with the cutbacks, what you are doing
4 first?

5 MR. VAUGHN: Well, you're right, it does get --
6 it borders on the unbearable. For many people, it exceeds the
7 unbearable.

8 We reach temperatures on occasion of 130 degrees.
9 And during those times at night, it doesn't cool off below 100,
10 either.

11 And it is a problem in the buildings. It's
12 exacerbated because the inmates shower in the buildings, so
13 while you have the high temperatures, you also have just a
14 critical rise in humidity as well.

15 I took a look at that last year. One of the
16 things that we did to help in the immediate was, we fashioned, I
17 guess, what you'd call security screen doors, that we were able
18 to replace the solid doors with on the buildings, which allowed
19 us to keep them open 24 hours a day. That significantly reduced
20 both the temperature and the humidity in the buildings, making
21 it much more tolerable. It still isn't comfortable, but it's
22 still tolerable.

23 When the institution was built, it was built with
24 an evaporative system and not an air chiller system. We've
25 submitted a capital outlay budget change proposal. We've been
26 successful in getting the architectural and engineering survey
27 completed. The result of that was, they agree. Not only do we
28 need an air cooling system, an air conditioning system, but we

1 also need new roofs.

2 The downside of that was, they came in with a
3 figure of, I think, about 28 million dollars to do that. So
4 right now, while we're continuing to pursue that, we're having
5 to live with the security doors.

6 CHAIRMAN BURTON: I don't know the layout of the
7 prison, but even like big kegs of ice with fans blowing off
8 them, something like that, would it have any merit?

9 MR. VAUGHN: It does have merit, and I think in
10 the past that it's been done. I don't know if we're doing that
11 now.

12 We do have a minimum of seven of the very large
13 industrial sized fans in each building. We recently went --

14 CHAIRMAN BURTON: Seven in each building?

15 MR. VAUGHN: Seven of those in each building.
16 And we adjusted those to, you know, kind of assist in keeping
17 the air moving, and kind of pumping the bad air out.

18 CHAIRMAN BURTON: Ice is a fairly cheap thing.

19 MR. VAUGHN: It is.

20 CHAIRMAN BURTON: Do you ever have like inmates,
21 I guess, heat exhaustion? Anybody that you know ever die down
22 there from heat exhaustion or whatever?

23 MR. VAUGHN: No, sir. We've never had a death.
24 And in fact, strangely as it seems, heat stroke, heat exhaustion
25 is very, very rare. I think there's been one case since I've
26 been there.

27 You don't have to be there very long before you
28 realize how to take care of yourself in that heat.

1 CHAIRMAN BURTON: How would that be?

2 MR. VAUGHN: Stay in the shade as much as you
3 can, stay in the building when you can. Don't exercise during
4 heat of the day.

5 CHAIRMAN BURTON: How about just the building at
6 night? If it's a hundred degrees, do the cells have barred
7 windows or something? I'm just trying to imagine, because the
8 cells are small, you've got two people in there. I'm wondering
9 like at night, especially if there's any humidity left over.

10 Does it cause discipline problems? Do people get
11 cranky, or not as much as one would think?

12 MR. VAUGHN: First of all, we're lucky because I
13 have a dorm, it's a dorm setting. So, the guys aren't locked up
14 two to a cell.

15 With that kind of air system, I don't think it
16 could be done. I think it would cause friction.

17 But in answer to the second part of your
18 question, we really have very few disciplinary problems due to
19 the heat. I'm sure that occasionally it happens, but it isn't a
20 major issue.

21 SENATOR KARNETTE: What level prisoners do you
22 have? You can't pull all prisoners in a dorm setting; can you?

23 MR. VAUGHN: No, you can't. We're a Level II
24 facility with a 300 man minimum support facility. So, we have a
25 small Level I, which is the lowest custody level. Everybody
26 else is at Level II.

27 CHAIRMAN BURTON: Senator Johnson.

28 SENATOR JOHNSON: No questions.

1 CHAIRMAN BURTON: Senator Knight.

2 SENATOR KNIGHT: No questions.

3 CHAIRMAN BURTON: Senator Karnette.

4 SENATOR KARNETTE: No more.

5 CHAIRMAN BURTON: How do you select your inmates
6 in the substance abuse program?

7 MR. VAUGHN: We have a screening process that we
8 go through. We've just initiated our substance abuse program.
9 We're very happy with it. I think it's going to be very, very
10 successful.

11 We started it with 48 inmates. That was our
12 startup number the middle or the first part of May. We're up to
13 70 now, and we're adding 10 inmates every other week until we
14 reach one whole building, which will be 298 inmates
15 participating, half in the a.m. and then half in the p.m.

16 What we're struggling with right now is just
17 space, like everything else.

18 CHAIRMAN BURTON: How do you screen them?

19 MR. VAUGHN: Oh, it's through the classification
20 process. We take a look at variety of factors. Number one, of
21 course, is, there has to be an element of substance abuse in
22 their history.

23 Then we take a look at the time involved, or the
24 time that they have left to serve, to make sure that they have
25 ample time to complete the program.

26 CHAIRMAN BURTON: How long's the program?

27 MR. VAUGHN: A minimum of six months.

28 CHAIRMAN BURTON: Somebody's in the program how

1 many hours a day or a week?

2 MR. VAUGHN: They're in the program five days a
3 week, four hours a day.

4 CHAIRMAN BURTON: They are?

5 MR. VAUGHN: Yes, sir.

6 CHAIRMAN BURTON: And the program consists of?

7 MR. VAUGHN: It's through our contract provider,
8 which is Amity House. And it's based on a therapeutic
9 community. We have some very good counselors.

10 CHAIRMAN BURTON: Group stuff?

11 MR. VAUGHN: Yes, sir.

12 CHAIRMAN BURTON: Psycho drama; any of that?

13 MR. VAUGHN: Yes, all of that, yes, sir.

14 CHAIRMAN BURTON: Who determined that six months
15 would be the length?

16 MR. VAUGHN: I'm not sure, Senator. I believe
17 that that was established by the Department in working with the
18 contractors.

19 CHAIRMAN BURTON: Well, it would seem to me,
20 although you're not full yet, but if you ever got a waiting
21 list, that most of the drug programs are 21, 28 days. They're
22 more all day than half a day.

23 But that may be something, and if you don't have
24 a waiting list, then it really wouldn't matter. But basically,
25 28-day programs, or whatever, then the aftercare which just
26 could be two or three nights a week, four nights, or even just a
27 couple hours, AA programs. That would make sense.

28 We had real hearings with the Youth Authority. I

1 think their drug program, it seemed like it was three years.
2 Even if you only had to serve two years' time, they'd keep you
3 there an extra year for the program. They were doing it like an
4 hour a day. I mean, it was stupid.

5 Four hours a day, I think, makes sense. It
6 really, I think, is something that it would make sense to have
7 reviewed by experts in the field, or people that do it, because
8 basically I know that most of the programs, if you go to Betty
9 Ford, or you go to Camelback, you go to where ever, they're like
10 21 to 28 days. Then, of course, you've got the aftercare
11 component.

12 I think that it could help you get more people in
13 it, assuming that I know more what I'm talking about than the
14 experts do, which I'm not saying I do.

15 But six months, I think that's very good. The
16 more the merrier. But if it's keeping some other people out
17 sometime, it's just something to check on.

18 MR. VAUGHN: Sure.

19 CHAIRMAN BURTON: One other question.

20 Are you familiar with Alicia Canedo?

21 MR. VAUGHN: Yes, sir, I am.

22 CHAIRMAN BURTON: You're familiar with her
23 problem.

24 MR. VAUGHN: Yes, sir, I am.

25 CHAIRMAN BURTON: Is she here? No. We can deal
26 with that problem later. I was going to say that you could
27 respond to what she says, but if she's not here to say anything,
28 I guess you don't have to.

1 What do you think her problem is with you?

2 MR. VAUGHN: I think I'm just a carryover from
3 the problem that began --

4 CHAIRMAN BURTON: The last one?

5 MR. VAUGHN: Yes, sir.

6 CHAIRMAN BURTON: Yeah, she had a beef with the
7 other one.

8 Witnesses in support, please, briefly.

9 MR. NATIVIDAD: Good afternoon. My name's James
10 Robert Natividad. I'm a lieutenant at Chuckawalla Valley State
11 Prison. I'm the designee for the Correctional Supervisors
12 Organization.

13 I'd like to take this time to let you know that
14 Mr. Vaughn has done an excellent job since he's been there.
15 He's adjusted from the temperature of Tehachapi, which is cold,
16 and which I was started at, and could understand going to a hot
17 temperature of Blythe. And he seems to be dealing with it very
18 well.

19 He has made all those changes that he's talked
20 about, and the staff are really pleased with the progress that
21 we're making there at Chuckawalla.

22 So, I endorse him for our warden on behalf of the
23 Supervisors.

24 CHAIRMAN BURTON: Thank you.

25 Next.

26 MS. GOODMAN: My name is Mari Goodman. I'm the
27 District Labor President in DLC 707, and I serve on CSEA's
28 committee known as CIC. That is Correctional Institutions

1 Committee. I noticed a couple of people didn't know what that
2 was.

3 CHAIRMAN BURTON: It's the Counter Intelligence
4 Corps.

5 [Laughter.]

6 MS. GOODMAN: CIC members have toured the
7 facilities where these wardens have served.

8 I want to mention something. A couple of weeks
9 ago, Senator Burton said something that really was kind of
10 profound to me. He said, you know what? I want you to talk to
11 me like a friend. And I really appreciate that, because I want
12 to tell you today, this is the kind of rapport that we've had
13 with these two wardens, in particular Warden Yarborough and
14 Mr. Vaughn. I've had the opportunity to work with them at our
15 facilities, and it's easy talk to them as a friend. And we get
16 mad, and we resolve.

17 So, the members have sent me on behalf of CSEA to
18 stand in support of the commitments that they have made.

19 Mr. Hernandez, I will also go on the record to
20 say yes, we are in support.

21 Good luck to all three.

22 CHAIRMAN BURTON: Thank you very much.

23 Next.

24 MS. McDOUGAL: Good afternoon, Chairman Burton
25 and Members of the Committee. My name is Dianne McDougal,
26 President of the Employees Association at Chuckawalla Valley
27 State Prison.

28 I am pleased to appear before you today in

1 support of our Warden, Tom Vaughn. Since Mr. Vaughn's arrival,
2 he has been a strong supporter and participant in all of our
3 activities. Whether it is cooking hamburgers for the 4th of
4 July staff barbeque, when the temperature is 115 degrees,
5 boiling 900 pounds of crab for our annual crab feed, delivering
6 Easter baskets to 200 needy children in our community,
7 distributing 200 bicycles and 2,000 toys to 500 under-privileged
8 families during the holiday season, serving turkey to the entire
9 staff at our all-staff holiday potluck, or helping at the local
10 food kitchen, Mr. Vaughn can always be counted on. His
11 willingness to be actively involved is truly appreciated.

12 We have found him to be fair, honest, and
13 decisive, willing to share his opinion but eager to listen to
14 staff input. He is receptive to new ideas and generally
15 committed to ensuring CVSP is an institution with high morale
16 and job satisfaction.

17 Thank you for the opportunity to address the
18 Committee and express our unanimous support for Mr. Vaughn's
19 confirmation.

20 CHAIRMAN BURTON: Thank you, ma'am.

21 Next.

22 DR. CULTON: Good afternoon, Senator Burton,
23 Committee. My names John Culton. I've been the Chief Medical
24 Officer, Health Care Manager at Chuckawalla Valley State Prison
25 since 1991.

26 I'm here to lend my support for the confirmation
27 of Mr. Vaughn as Warden. His understanding of medicine and
28 health care issues is very, very complete, and his understanding

1 of the desert environment and the heat involved is also very,
2 very excellent.

3 I'd just -- I would like to pat him on the back
4 and say thanks.

5 CHAIRMAN BURTON: Give it a shot. Thank you.

6 MR. DIN: My name is Ray Din, Regional Vice
7 President for CCWA, representing the local chapter at
8 Mr. Vaughn's institution.

9 We're here in support. We'd like to thank him
10 for all his support that he has given us in that very remote,
11 hot city of Blythe.

12 Thank you.

13 CHAIRMAN BURTON: Thank you.

14 Next.

15 MR. TATUM: I'm Richard Tatum, State President of
16 the California Correctional supervisors Organization.

17 Mr. Vaughn also worked for me as a correctional
18 officer in the '70s. Along with that, he's also a personal
19 friend.

20 CHAIRMAN BURTON: Mike, could you get us his
21 personnel file?

22 [Laughter.]

23 CHAIRMAN BURTON: You've got a lot going, I'll
24 tell you, with all these wardens.

25 MR. TATUM: I'll tell you, Senator, right now
26 there's 15 wardens in the state that used to work for me, 15 of
27 them.

28 CHAIRMAN BURTON: You trained them well.

1 MR. TATUM: I think I did real well.

2 With that, we ask for your support.

3 CHAIRMAN BURTON: Thank you, sir.

4 Next.

5 MR. WILLIAMS: Good evening. My name is Ike
6 Williams. I'm representing ABCW, Association of Black
7 Correctional Workers.

8 We are in support of Warden Vaughn. Like to have
9 him out in the desert. He's been working with the Association
10 since he's been here in all sorts of activities. We want to
11 continue that type of cooperation as the years go on.

12 CHAIRMAN BURTON: Thank you, sir.

13 Next.

14 MR. FLAHARTY: Good afternoon, Senators. I've
15 appeared here before. John Flaharty, I'm a correctional
16 sergeant at Chuckawalla Valley State Prison. I'm the ex-chapter
17 president from the last term.

18 Thirteen-and-a-half years I've been at
19 Chuckawalla, we've had seven wardens; this will be the seventh.
20 Out of them, five have sit at the desk and never done nothing.
21 The past warden we had was a -- took care of business.

22 Mr. Vaughn drove up. We figured, here we go
23 again. The man has walked in, taken control, and done an
24 excellent job.

25 We urge an aye vote for confirmation. Nobody
26 wants to be in Chuckawalla because of the heat, very few. If
27 he'll come down and do the job that he's done, the man deserves
28 the position.

1 Thank you.

2 CHAIRMAN BURTON: Thank you.

3 What's the average term for a warden at an
4 institution?

5 MR. VAUGHN: I don't know, Senator. I know that
6 in the past it was longer. I know that, for example, at CMC, I
7 think they've only had five wardens since they built the place,
8 and I think they've had some that have served as long as eight,
9 nine, maybe ten years.

10 But I think as time progresses, it gets shorter.
11 It's probably three, to five, or six years now, I would think.

12 CHAIRMAN BURTON: Idle curiosity, what do you
13 think the reason was for seven in fifteen years? That's about
14 two years apiece. People want to get out, or the Department
15 wants them out, or what?

16 MR. VAUGHN: I don't think it's the Department.
17 I could offer a philosophical idea on it, and I think it's just
18 that the job daily becomes more and more complex, and it becomes
19 more and more of a juggling act, trying to care for the inmates
20 that you're responsible for, and at the same time, care for the
21 employees, deal with the facts of the budget, labor relations
22 issues. It's a very complicated job.

23 CHAIRMAN BURTON: Do any of the wardens go back
24 to being officers, or lieutenants, or something, or once a
25 warden you never drop back?

26 MR. VAUGHN: You just fade away.

27 [Laughter.]

28 CHAIRMAN BURTON: Like that old barracks ballad.

1 SENATOR KNIGHT: Old soldiers never die.

2 CHAIRMAN BURTON: Witnesses in opposition?

3 Hearing none, call the roll.

4 SECRETARY WEBB: Senator Karnette.

5 SENATOR KARNETTE: Aye.

6 SECRETARY WEBB: Karnette Aye. Senator Knight.

7 SENATOR KNIGHT: Aye.

8 SECRETARY WEBB: Knight Aye. Senator Romero.

9 SENATOR ROMERO: Aye.

10 SECRETARY WEBB: Romero Aye. Senator Johnson.

11 SENATOR JOHNSON: Aye.

12 SECRETARY WEBB: Johnson Aye. Senator Burton.

13 CHAIRMAN BURTON: Aye.

14 SECRETARY WEBB: Burton Aye. Five to zero.

15 CHAIRMAN BURTON: Congratulations, Warden.

16 MR. VAUGHN: Thank you.

17 CHAIRMAN BURTON: Warden Yarborough.

18 MR. YARBOROUGH: Good afternoon, Senator Burton
19 and distinguished Senators. My name is Mike Yarborough, Warden
20 at the California Correctional Institution at Tehachapi.

21 It is an honor and an opportunity to serve the
22 citizens of this great state as a public servant. It is not a
23 duty I take lightly.

24 As a matter of introduction, I'm a native
25 Californian, having received my Associate and Bachelor degrees
26 in criminal justice from our junior college and state university
27 systems.

28 My 24 years of correctional experience includes

1 starting as a correctional officer at Deuel Vocational
2 Institution. During my five years as an officer, a
3 correctional foundation was formed in me by some of the finest
4 professionals I have ever worked with. I have developed these
5 cornerstones over the years, using them as a guide to teach and
6 lead the staff I have been privileged to work with. I rely upon
7 this invaluable experience to this day. It is important never
8 to forget where I started, to understand where I have been,
9 acknowledge where I am, and have the confidence to go where I
10 need to go.

11 With your permission, I'd like to answer any
12 questions you have about my qualifications to serve as warden.

13 CHAIRMAN BURTON: You're the only adult prison
14 with young people in it?

15 MR. YARBOROUGH: That's correct, Senator.

16 CHAIRMAN BURTON: There's been some comment that
17 the processing of the minors or youth was very slow.

18 What steps have they been taking to speed up the
19 processing of the minors?

20 MR. YARBOROUGH: First of all, Senator, when the
21 youth offender program arrived and was placed at the prison at
22 Tehachapi, Tehachapi had a Reception Center. And those
23 Reception Center staff were used to process the incoming youth
24 offenders.

25 I have recently, in the last months, lost the
26 Reception Center, and it's been replaced with a Level IV general
27 population facility. I have had a challenge --

28 CHAIRMAN BURTON: Due to overcrowding?

1 MR. YARBOROUGH: Overcrowding of Level IVs, yes,
2 and a reduction in the intake of Reception Center inmates.

3 I have endeavored to address the challenge of
4 processing the youthful offenders in a timeframe of less than 45
5 days, and the normal processing for adult offenders is from 45
6 to 60 days. And I have set the expectation now to process
7 youthful offenders within 30 days of their arrival from the
8 county of commitment.

9 CHAIRMAN BURTON: You lost the Reception Center
10 because there's prisoners sleeping in it now or what?

11 MR. YARBOROUGH: The Reception Center was
12 converted to a Level IV facility.

13 CHAIRMAN BURTON: And the Reception Center was
14 what? Where people were received; right?

15 MR. YARBOROUGH: That's correct.

16 CHAIRMAN BURTON: What did they do when they went
17 in? They stayed the first while there or what?

18 MR. YARBOROUGH: They underwent their processing,
19 and then they were transferred to a prison that was appropriate
20 for their level and case factors.

21 CHAIRMAN BURTON: So, you don't have that, so
22 what happens to them when they walk in?

23 MR. YARBOROUGH: Are you referring to the
24 youthful offenders?

25 CHAIRMAN BURTON: Yeah, first.

26 MR. YARBOROUGH: Well, the Reception Center
27 processing requires more staff-intensive work. So, losing the
28 staff that I had to process those, I no longer had the ratio of

1 staff to process the incoming youthful offenders. So, that was
2 a challenge.

3 CHAIRMAN BURTON: Doesn't it make more sense to
4 have these youthful offenders in a prison with a Reception
5 Center? Do you think it matters?

6 MR. YARBOROUGH: I don't think it matters.

7 I think the original theory was placing it at
8 Tehachapi, which had a 180-degree housing unit that allowed for
9 separation of the youthful offenders from the adults,
10 commensurate with the Welfare and Institutions Code.

11 Plus, it was in fairly close proximity to Los
12 Angeles County, where most of the offenders came from, to allow
13 for family members to have a better chance of visiting them than
14 they would at a more distant prison.

15 CHAIRMAN BURTON: The youthful offenders are
16 segregated from the adult population?

17 MR. YARBOROUGH: Yes.

18 CHAIRMAN BURTON: I guess by virtue the fact that
19 they're in a prison like that, that the crimes were violent.

20 MR. YARBOROUGH: Well, we currently have a total
21 of 106 youthful offenders. And the population will vary,
22 depending upon those reaching their 18th birthday.

23 But most of the offenders we have are violent.
24 We do have some Level Is, Level IIs, Level IIIs, and Level IVs.
25 And because they're from throughout the entire state, there are
26 different levels, there are different ethnicities, competing
27 gang rivalries, and the sort.

28 CHAIRMAN BURTON: Level I is what?

1 MR. YARBOROUGH: It's the least secure level that
2 we have.

3 CHAIRMAN BURTON: It would seem that if somebody
4 was in a Level I, why would they even bother having them in an
5 adult prison?

6 MR. YARBOROUGH: Well, I think that decision to
7 prosecute them and try them as an adult occurred at the local
8 jurisdiction.

9 But once convicted as an adult and sentenced to
10 state prison, they're placed in that youthful offender program
11 until they parole or achieve their 18th birthday.

12 One of those individuals who had been, after
13 achieving 18 years of age would be transferred to a Level I
14 facility somewhere in the state, preferably close to where they
15 were committed.

16 CHAIRMAN BURTON: It seems bizarre that if
17 somebody was in a Level I, that would mean that they're less
18 dangerous or less likely to escape? Less likely to do
19 something.

20 MR. YARBOROUGH: Yes.

21 CHAIRMAN BURTON: To me, that makes me wonder why
22 they were tried as an adult, because you'd think you'd want to
23 try as adults people that are incorrigible or something.

24 Also, just like you could have somebody doing
25 something serious, or really kind of stupid once, but they're
26 not incorrigible.

27 What do you do with these kids? Do you have a
28 program for them so when they come out, they're worse criminals

1 than when they went in?

2 MR. YARBOROUGH: I hope not.

3 CHAIRMAN BURTON: So do I.

4 MR. YARBOROUGH: The offenders that come in who
5 do not have a high school diploma or a GED --

6 CHAIRMAN BURTON: Most of them, I would assume?

7 MR. YARBOROUGH: Do not. We enroll them in a
8 high school. And we have a bona fide high school with a
9 curriculum much like you would see out in Community X.

10 So, those individuals that do not have a high
11 school diploma are enrolled in high school. We separate the
12 Level Is and IIs from the Level IIIs and IVs. And even within
13 those levels, the competing factions, we separate those.

14 We're very staff-intensive. For the 106 youthful
15 offenders I currently have, we have eight teachers assigned, and
16 a full-time psychologist whose sole purpose and responsibility
17 is to tend to the needs of the youthful offenders.

18 Once they achieve their high school diploma, of
19 which we have 28 who have graduated so far, which is an
20 excellent achievement on the part of our education staff, they
21 are then eligible to be assigned to one of the jobs within the
22 confines of our youthful offender program, a teachers aid, maybe
23 a porter in the unit, until they reach 18 years of age.

24 CHAIRMAN BURTON: Senator Johnson.

25 SENATOR JOHNSON: No questions.

26 CHAIRMAN BURTON: Senator Romero.

27 SENATOR ROMERO: Thank you.

28 Continuing along the lines of the question about

1 Level I, Level II for the youthful offenders, you indicated that
2 you separate them for the high school, Level I and II together,
3 and then Level III and IV.

4 Is that only for the high school education, or
5 for all other programs and any potential interaction?

6 MR. YARBOROUGH: That's for all interaction,
7 including the academic programs.

8 When they first arrive, we assess their level,
9 and then we assess their case factors, do a personal interview
10 with each one to determine their compatibility with the other
11 youth in the program, whether they have any enemy situations.

12 We also evaluate their prior Youth Authority
13 behavior, if it exists. And if they had any disciplinary
14 behavior, what that was.

15 We also evaluate whether they had any gang
16 affiliation, and then all those evaluations combined will
17 determine where we place them in a program.

18 But within the Level I and II, and III and IV,
19 there may be even separate programs.

20 And with our staff-intensive education staff,
21 they do a tremendous job in addressing the educational needs of
22 virtually all of those offenders.

23 SENATOR ROMERO: You indicate in your responses
24 that the average reading level of the inmates, and I don't know
25 if this is for the youth included, is about the sixth grade
26 level.

27 First of all, could you clarify, is that the
28 average for all, youth through whatever age? As well as, do you

1 do any assessment before they leave the prison as far as, has
2 there been a gain? Is there a demonstrated effectiveness of the
3 literacy programs that you have ongoing?

4 MR. YARBOROUGH: Having discussed some of the
5 literacy curriculum with the teachers assigned to the youth
6 offender program, I can attest that those individuals that are
7 enrolled in the high school do raise their reading level.

8 Whether it's measured before they reach 18 and
9 move out of the program or parole, I'm not sure.

10 But they're taught to study a curriculum that
11 includes Shakespeare, for example, and their reading level does,
12 in fact, rise while they're in the program.

13 SENATOR ROMERO: For the over 18?

14 MR. YARBOROUGH: The 6.3 reading average is for
15 the entire institution.

16 SENATOR ROMERO: And any assessment as to whether
17 or not the adults demonstrate any increase in their literacy or
18 reading level?

19 MR. YARBOROUGH: Well, I believe that,
20 institution-wide, as an inmate is enrolled in an education
21 program, and they rise from what we call Adult Basic Education
22 I, II, III, and on to their GED, and there will be a test to
23 determine if they have reached the appropriate reading level to
24 move on to the next level.

25 So, before they parole, I would presume that that
26 test would occur so that they could achieve a level commensurate
27 with the next step.

28 SENATOR ROMERO: Thank you.

1 CHAIRMAN BURTON: Senator Knight.

2 SENATOR KNIGHT: Thank you, Mr. Chairman.

3 It's a lot nicer weather up there; isn't it?

4 MR. YARBOROUGH: Yes, it is, Senator.

5 SENATOR KNIGHT: How are you handling your
6 infrastructure and your maintenance, because I know that
7 facility is getting old and dilapidated. What are you doing
8 with it?

9 MR. YARBOROUGH: Well, there are many
10 infrastructure repairs that are needed. We have a list of those
11 that have been submitted for consideration to our Headquarters.

12 And as I'm sure everyone knows, with budgetary
13 constraints, priorities must be set. We endeavor to prioritize
14 our own and push for consideration of those that we feel are
15 most important to achieve repairs on.

16 SENATOR KNIGHT: Do you have any heating
17 problems?

18 MR. YARBOROUGH: Not a heating problem per se.

19 We have a heat loop, which is an underground
20 water supply system that does help heat the water for showers,
21 and that was built in 1986, or '85. So, it's been under ground
22 for many years and is deteriorating. That's one of our major
23 repairs that needs to be made.

24 Within the last year, we've had a need to request
25 emergency repairs for that underwater loop that must transport
26 water from our Level II facility, up an elevation of 400 feet,
27 and nearly a mile in distance.

28 CHAIRMAN BURTON: Mike, maybe you could get

1 this. I'm really kind of interested in youthful offenders that
2 they can put in Level I. Why are they even tried as adults if
3 they can be put in Level I? That's like probably for petty
4 theft with a prior.

5 MR. MIKE NEAL [FROM THE AUDIENCE]: We'll check
6 the files.

7 CHAIRMAN BURTON: Do you have any family here?

8 MR. YARBOROUGH: Yes, I do.

9 I'd like to introduce my wife Brenda, my son
10 Greg, and my daughter Shonda.

11 CHAIRMAN BURTON: Witnesses in support.

12 And there were several on the record earlier in
13 support.

14 Go ahead, ma'am.

15 MAYOR TEEL: Good afternoon. My name is Mariana
16 Teel. I'm the Mayor Pro Tem from the City of Tehachapi.

17 And the City Council supports Mr. Yarborough as
18 Mayor [sic] for CCI.

19 CHAIRMAN BURTON: Thank you, ma'am.

20 MR. MARTINEZ: Good afternoon. I'm Nick
21 Martinez. I'm the Vice President and Chief Steward for District
22 Labor Council 771.

23 I had the pleasure of touring Tehachapi, CCI.
24 There were a couple of issues there that we brought up to Warden
25 Yarborough, and we were quite impressed with the way he decided
26 to -- or he took the tour of the institution that afternoon,
27 looking into these issues.

28 CSEA, SEIU Local 1000 gives our support to Warden

1 Yarborough.

2 CHAIRMAN BURTON: Thank you, sir.

3 I don't want to hear it.

4 [Laughter.]

5 MR. TATE: Richard Tatum, California Correctional
6 Supervisors Organization.

7 And I hope you don't hold this against him, but
8 he also worked for me in the '70s.

9 [Laughter.]

10 MR. TATE: Mike's a personal friend of mine also.

11 I will say that with these guys, they've got
12 their job to do. We, as an organization, bump heads with them
13 somewhat, but these folks, just like Mike, have integrity and
14 truthfulness, and this is the type of people we need as wardens.

15 Thank you.

16 CHAIRMAN BURTON: Any witnesses in opposition?
17 Hearing none, call the roll on the nomination.

18 SECRETARY WEBB: Senator Karnette.

19 SENATOR KARNETTE: Aye.

20 SECRETARY WEBB: Karnette Aye. Senator Knight.

21 SENATOR KNIGHT: Aye.

22 SECRETARY WEBB: Knight Aye. Senator Romero.

23 SENATOR ROMERO: Aye.

24 SECRETARY WEBB: Romero Aye. Senator Johnson.

25 SENATOR JOHNSON: Aye.

26 SECRETARY WEBB: Johnson Aye. Senator Burton.

27 CHAIRMAN BURTON: Aye.

28 SECRETARY WEBB: Burton Aye. Five to zero.

1 CHAIRMAN BURTON: Congratulations, Warden.

2 MR. YARBOROUGH: Thank you.

3 [Thereupon this portion of the
4 Senate Rules Committee hearing
5 was terminated at approximately.
6 2:50 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of June, 2002.

Evelyn J. Mizak
EVELYN J. MIZAK
Shorthand Reporter

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28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

MEMBER ABSENT

SENATOR ROSS JOHNSON, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

RICHARD C. BLUM, Member
The Regents of the University of California

JOHN GAMBOA, Executive Director
Greenlining Institute

REVEREND CLEVELAND WILLIAMS
Allen Chapel A.M.E. Church/Faith Community

LETICIA VALDEZ
Latino Issues Forum

LEO AVILA
American GI Forum

1 SUSAN CHENG
Council of Asian American Business Associations

2
3 ORSON AGUILAR
Greenlining Institute, and also representing
4 JORGE CORRALEJO, Latin Business Association

5 MEGAN YBARRA
California Hispanic Chambers of Commerce

6
7 DAVID CLEMENTS, President
Sacramento Chapter
8 Black American Political Association of California (BAPAC)

9 SONIA VERDUZCO, on behalf of BEN BENAVIDEZ
Mexican American Political Association

10
11 ART POLASKI
California Labor Federation

12 RICARDO F. ICAZA, Member
13 Trustees, California State University

14 HAIM SABAN, Member
The Regents of the University of California

15
16 ROLAND GNAIZDA, General Counsel
Greenlining Institute; California Hispanic Chamber of Commerce

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Richard Blum, member of the Regents, has to catch an airplane. So, it's been agreed to by Mr. Icaza that Richard Blum could come first.

I would just like to make a brief introduction from the Chair that Dick Blum is my constituent and has been a long time friend.

Who wrote this, you? He's a true Renaissance man.

He is a successful businessman, active in a wide range of things. He's a graduate of the university. He's been on many boards, profit-making and nonprofit. He has been a contributor, both emotionally and intellectually and financially to the Board of Regents.

Richard, we welcome you to the Committee.

MR. BLUM: Thank you, Senator Burton.

Ladies and gentlemen, thank you very much for having me here today. I consider it a great honor and privilege to have been appointed to the Board of Regents.

It's hard to reflect that it's been this many years, but I have, next year, a continuous association with the university for 50 years. I started Berkeley in 1953. I received my BA and MBA from Berkeley as well, also worked on a Ph.D. program in economics.

My background is that I was born and raised in San Francisco. I went through the public school system in San Francisco, and enrolled in Berkeley when they were upset because

1 the registration fee, as they called it in those days, had gone
2 to \$75 a semester, which I think was up from zero.

3 And I've been really involved with the Business
4 School since I left, serving on its Board of Advisors, and have
5 been a contributor really to the Business School over the last
6 several years because, despite the fact that a number of us
7 built almost like a new campus for the Business School, we have
8 been losing professors to places like Stanford. So, a couple of
9 us have gotten together and contribute a million dollars a year
10 to help with salaries.

11 I think what bothers me most, and what I'm most
12 interested in as a Regent, is the fact that the equal playing
13 field has become less and less equal over a period of time.

14 Now, as I discussed yesterday with Senator
15 Knight, not everybody necessarily wants a degree from the
16 University of California system. But my attitude is, those who
17 want to have a degree, we ought to do everything possible to
18 help them.

19 So, the fact that the university system now
20 reaches back not only into the community colleges and helps to
21 transfer people through the dual program, or just in general, up
22 after a year, really after a couple of years, into the
23 university system, I think that's good.

24 I think it's even better to know that we're now
25 reaching back into K through 12, because I think with a lot of
26 these kids, if they're not doing well early on, the chances of
27 them moving ahead are diminished.

28 So, one of the things that I think is also -- we

1 need more of, although the university system has, I think, done
2 quite well compared to others in subsidizing students who cannot
3 afford the tuition or room and board, and particularly I think
4 Senator Burton was behind the Cal Grant Program, which I think
5 helps a great deal, I am opposed to certainly any near-term
6 increase in tuition. If you want to ask me questions later, I
7 can even explain to you why I think financially it doesn't make
8 any sense.

9 By way of background, I'm an investment banker.
10 I've been involved, as has been mentioned, with many corporate
11 boards and many nonprofit institutions. A lot of it has to do
12 with philanthropic work, both domestically and internationally,
13 including being on the Board of the Carter Center and having
14 started a foundation 20 years ago called the American Himalayan
15 Foundation, which is involved in 75 projects at any given time
16 in the Himalayan region.

17 And the reason I bring that up is, we have also
18 built over 100 schools and probably subsidized more than that in
19 the region. And we have seen how you can take people from even
20 the most primitive backgrounds, in some cases where you had
21 people whose parents carried loads up and down the mountains in
22 the Mount Everest region, Sherpas, for a dollar or two a day,
23 and had some of their children become -- go through medical
24 school over here, become foresters, pilots, and so forth.

25 So, I'm a great believer in trying to help
26 however you can, regardless of background.

27 One of the issues that I feel strongly about, and
28 my wife, who I think you know, is Senator Feinstein, has to deal

1 with continuously is that where we need to bring up the lower
2 end, and bring kids up as much as possible.

3 Another issue is that you're not getting enough
4 people with graduate degrees. And continuously, my wife's
5 office has applications from major corporations in Silicon
6 Valley saying, we can't find U.S. citizens to fill these jobs.
7 And so, I think we need to do a better job with that.

8 I also feel very strongly that we -- one of the
9 great reasons that this state has moved ahead is because of the
10 University of California system. You wouldn't have Silicon
11 Valley or San Diego, or some of these other pockets of
12 opportunity and growth economically doing what they were doing.

13 In any event, I can go on for a long time. I'm
14 looking at Johnny; he wants me to shut up, so I will answer any
15 questions.

16 CHAIRMAN BURTON: Thank you, Mr. Blum.

17 There's a couple questions. Issues have been
18 raised with me with graduates from the university and others
19 that it would seem to me that we can't do enough, either by
20 grants or other things, to help students get into the undergrad
21 thing, and see what we can do about keeping the so-called fees,
22 as opposed to tuition, reasonable.

23 But do you see whether or not, when you get into
24 the graduate thing, where people are going to be moving into
25 fairly, you know, lawyers, doctors, higher paid positions, that
26 possibly a way to help out the university is to have increased
27 fees, or whatever, for those in graduate school, understanding
28 that if people are of modest or limited means, then there should

1 be, like, scholarships and grants available? Is that something
2 that the Regents ever kick around or think about?

3 MR. BLUM: A, I don't know whether they have or
4 not. I've only been to two Board of Regents meetings.

5 But B, they should.

6 One of the things that I think is relatively new
7 in the last decade is that UC, UCLA, and the rest of campuses
8 are actually out trying to raise private endowment money. In
9 the old days, if you asked somebody to contribute to something,
10 one of the schools in the UC system, the answer was, "Excuse me,
11 I paid my state taxes." I think people now understand that
12 that's not enough.

13 So, I really think you have to find ways to
14 finance people that want to go through, particularly something
15 like medicine. If a student himself has to pay for all that,
16 and even if there're loans, they wind up having debts of perhaps
17 a couple hundred thousand dollars before they even get started,
18 which I think, frankly, has to discourage a lot of people from
19 pursuing those professions.

20 CHAIRMAN BURTON: What's your position on the
21 diversity, affirmative action, Prop. 209, and now the Connerly
22 initiative, as it would affect the University of California?

23 MR. BLUM: Well, you know, I certainly didn't
24 vote for 209.

25 I'm happy to know that the Board Of Regents has
26 taken a position against it. I now understand there's a further
27 potential Connerly initiative that would prohibit the collection
28 of information as to different groups in our society,

1 economically, culturally, ethnically. I think it's a terrible
2 idea.

3 This day and age, one of the things that moves
4 this society and this world ahead is information. And to
5 prohibit -- to have a law that says you can't collect
6 information that says how well this group is either doing or not
7 doing so that we know where we are in this complex world, is
8 something that doesn't make any sense.

9 CHAIRMAN BURTON: There have been some
10 approaches, I think. Money was put into budget, I think, first
11 under Governor Wilson, which he may or may not have took out,
12 and then under Governor Davis, which again, I'm not sure what
13 happened, but to have funds for outreach into the various
14 communities to try to get, with affirmative action either banned
15 or eliminated, but to try to get a greater diversity of students
16 at our campuses. That's something --

17 MR. BLUM: Absolutely.

18 CHAIRMAN BURTON: -- that you would support?

19 MR. BLUM: I'm for any reasonable program that
20 helps our society, allow everyone an equal opportunity to move
21 ahead.

22 CHAIRMAN BURTON: How about, there's a concern
23 here that the campuses, although I don't want anybody in the
24 Central Valley to hear it, but I have great doubts about the
25 wisdom of the Merced campus. I only wish I owned a strip mall
26 near it.

27 In any event, an improvement in, you know, we
28 have about nine campuses, and then there's Merced, and to try to

1 increase, you know, possibly even doubling the number of
2 university campuses, which we fund through bonds also. There's
3 been very strong movement in the Legislature, a moratorium on
4 prisons of late, and use that funding that would go there into
5 the university, enlarging the campuses.

6 I assume that's a supportable position of the
7 Board?

8 MR. BLUM: I would say, am I in favor of less
9 prisons and more campuses, I think so.

10 CHAIRMAN BURTON: Man of courage.

11 Senator Knight.

12 SENATOR KNIGHT: Thank you, Mr. Chairman.

13 If we have less prisons, what do we do with the
14 criminals?

15 CHAIRMAN BURTON: Send them to college.

16 SENATOR KNIGHT: It's a rhetorical question.

17 MR. BLUM: With all due respect, Senator, I
18 didn't say we should have less prisons.

19 I just say what I'm saying is that we should
20 allocate our resources more toward trying to help people and
21 educate them.

22 SENATOR KNIGHT: I understand that, but I think
23 we still have to have a prison or two.

24 CHAIRMAN BURTON: We're going to put one in
25 Palmdale instead of the Veteran's Home.

26 SENATOR KNIGHT: Hey, we've got one in Lancaster.
27 That's only eight miles away. It's close enough.

28 MR. BLUM: I didn't suggest we should close any

1 down.

2 SENATOR KNIGHT: Okay.

3 We are having a significant fiscal problem this
4 year, the state is, budgetary problems, et cetera.

5 Did I hear you that you were not in favor of
6 raising fees --

7 MR. BLUM: Well, let me --

8 SENATOR KNIGHT: -- for students?

9 MR. BLUM: Let me explain, at least the best I
10 understand it, the economics of tuitions.

11 The university has a budget of about \$3.2
12 billion. About \$650 million of it comes from tuitions.

13 If you really look at -- let's just for the sake
14 of argument say we're going to raise tuitions 10 percent, which
15 would certainly disadvantage an awful lot of people if we did
16 it. So, that's 10 percent of \$650 million is \$65 million. Half
17 of that doesn't get to the university because some of it goes to
18 help people with their tuitions and expenses because of the
19 increase; some of the goes for other activities which I can't
20 enumerate.

21 So, you wind up with, let's say, \$32-33 million.
22 That's one percent of the entire budget of the University of
23 California.

24 So, you have to say to yourself, aside from how
25 you feel philosophically or politically about these issues, is
26 it really worth going through, having the burden of a 10 percent
27 increase to get a one percent increase in the amount of the
28 money that you can spend on the system?

1 So, that's why I'm against it.

2 SENATOR KNIGHT: I can understand that, and it's
3 probably a futile exercise to raise the tuition.

4 But we also provide tuition for illegal
5 immigrants similar to in-state tuition, and we charge people
6 from out of state out-of-state tuition. Is there inequity
7 there?

8 MR. BLUM: First of all, I think that the way I
9 understand it, that the out-of-state tuition is substantially
10 higher than that for residents, and I think it ought to continue
11 to be that way.

12 Frankly, if we need to raise tuitions at all, it
13 ought to be for out-of-state. I think we need to take care of
14 our own people here.

15 As far as immigration is concerned, I think we
16 ought to take care of the people we're legally responsible for.

17 SENATOR KNIGHT: Illegal immigration I'm talking
18 about, not immigration.

19 MR. BLUM: I don't know what the rules of law are
20 on that.

21 SENATOR KNIGHT: Come on.

22 MR. BLUM: I think if people aren't legal
23 residents here, then they shouldn't be allowed.

24 SENATOR KNIGHT: Thank you.

25 CHAIRMAN BURTON: Senator Karnette.

26 SENATOR KARNETTE: Would operating the university
27 year around, would that solve some of the problems that you see?

28 MR. BLUM: I think so. I mean, most businesses

1 work 12 months a year. I don't know why the university system
2 can't do the same.

3 I mean, you have billions of dollars of
4 infrastructure in terms of all these campuses, and equipment,
5 and buildings, you know. So, I don't see why a lot of them
6 should be left dormant in a couple months of the year.

7 SENATOR KARNETTE: It would cost more, I suppose.
8 It would seem to me it would. Maybe not so much if you balanced
9 other conditions.

10 MR. BLUM: Well, if you're going to go from
11 160,000 students up to 220,000 students, which is what they tell
12 me are the projections, you've got to say to yourself, what's
13 the most economical way to do it? Do you want to double the
14 number of campuses, as some suggest? Do you want to build on
15 existing campuses, which I think probably makes more sense
16 because there's a lot of room, but then there's also a lot of
17 capacity in the existing infrastructure that's all ready there
18 if you use them 12 months a year.

19 So, I'd be in favor of more --

20 SENATOR KARNETTE: And using technology somewhat,
21 distance learning, and weekend?

22 MR. BLUM: I think distance learning is doing
23 some amazing things, as you and I talked about before.

24 We gave, through the American Himalayan
25 Foundation, gave a scholarship to a young Sherpa who lives in a
26 very remote part of Nepal, but has, nonetheless, has
27 electricity. He was able to get a Master's degree in forestry
28 by distance learning.

1 So, I think if we can reach that far, we can
2 certainly take care of a lot of people here who aren't able, for
3 whatever reason, to get to the campuses.

4 CHAIRMAN BURTON: Senator Romero.

5 SENATOR ROMERO: Thank you.

6 President Atkinson has proposed to the Academic
7 Senate the discontinuation of the use of the SAT I. That's a
8 move that I strongly support.

9 It raises other questions, whether or not a sort
10 of custom designed test could be developed for California.

11 What's the status of that?

12 And also, what is the UC doing to perhaps make
13 sure that high schools throughout California are offering the
14 classes that are needed for testing on the SAT II, which still
15 would remain, and I think it's a bit more predictive of
16 students' abilities?

17 MR. BLUM: I wish I was as well informed as maybe
18 you think I am on those issues, but let me try.

19 One, I have talked to Dick Atkinson about his
20 views on this. He's an educator of great renown, and so I have
21 no reason to believe that his views on this issue aren't
22 correct.

23 Two is that, you know, I think of sort of the
24 battle days when, you know, you lived or died by a test or by
25 whatever your grades were. And I think to the extent that
26 people take a more qualitative view of how you let -- allow
27 people to enter the University of California system, taking into
28 consideration, you know, a lot of things as have been suggested

1 that you ought to look at, for example, you might find somebody
2 in the Hispanic community would perhaps know more about his own
3 history and his ancestry of where ever the family came from than
4 perhaps American history.

5 I think, nonetheless, you have to reach back into
6 high schools and say, "Okay, look. This is what you've got to
7 learn if you want to get into the UC system."

8 So, I'm glad to hear that this is now going on.
9 I don't think until recently there was that kind of reach. So,
10 if it's SAT II plus these other activities, the little I know,
11 it sounds like it's probably the right direction.

12 SENATOR ROMERO: Thank you.

13 CHAIRMAN BURTON: I see no family with you.

14 MR. BLUM: My wife's otherwise employed.

15 CHAIRMAN BURTON: Witnesses in support?

16 MR. GAMBOA: Thank you, Mr. Chairman.

17 My name is John Gamboa, and I'm the Executive
18 Director of the Greenlining Institute, an organization of close
19 to 40 minority organizations across the state, a coalition.

20 Normally we would oppose the addition of two
21 additional white, wealthy Regents. We would oppose it simply
22 because it would not fulfill the letter of the Constitution,
23 which requires diversity on the Regents.

24 However, we believe this is an exception in these
25 two gentlemen that are up today. The exception is because we
26 feel they are going to fulfill the promise of what diversity is,
27 the promise of what is required under the Constitution, and the
28 reasons for the requirement for diversity on that.

1 This is quite a divergence from our support or
2 feelings on the Regents. But in this particular case, given the
3 testimony that Mr. Blum has given today, and the questions that
4 you asked of him, I think that we would urge you to support
5 these appointments on it.

6 There are factors, though, that question this.
7 And the factors that make us question the appointments are not
8 here on this, but the process that was done. What's happening
9 is, we have an appearance in the state that government is for
10 sale. The appearance comes, rightfully or wrongfully, the
11 appearance has been wealthy contributors make contributions to
12 the campaigns, and then later are given appointments. It
13 undermines the integrity of the people that get those
14 appointments, and it does today on it.

15 So, we call that to your attention. We feel that
16 in the future, those kind of factors should be taken into
17 consideration.

18 I want to thank you for the time.

19 CHAIRMAN BURTON: Well, I want to thank you.

20 And the Committee, especially under lead of
21 Senator Romero, has been very concerned about the issue that you
22 raise. I know that I have made that clear to the Governor's
23 office, as has Senator Romero and Senator Karnette and others.

24 As I talked to Mr. Gnaizda and others, I'm
25 pleased that you found the character and integrity of the two
26 Regents to be such as you could be supportive of them, because I
27 felt it wasn't fair to them to suffer because of, I think,
28 dereliction in some areas on the part of the appointing power in

1 not reaching out to more diversity.

2 So one, I want you to know that we share your
3 concern.

4 Two, I want to commend you and your organization
5 for your ability to look beyond basically the stereotypes that
6 you were seeing, and look into the minds and the hearts of both
7 of these people and find out that they are going to be Regents
8 pushing for the type of positions that all of us embrace.

9 So, I want to thank you for your testimony, and,
10 I think, congratulate you for your vision on these appointments,
11 sir.

12 MR. GAMBOA: Thank you. That's the nicest you've
13 ever been to me.

14 [Laughter.]

15 CHAIRMAN BURTON: Have I ever seen you before?

16 Yes, sir.

17 REVEREND WILLIAMS: Thank you to Senator Burton
18 and the honorable constituents of this Committee.

19 I am the Reverend Cleveland Williams, Pastor of
20 Allen Chapel African Methodist Episcopal Church, located in
21 northern Sacramento, Del Paso Heights.

22 I've come today to speak for the confirmation in
23 a nonpolitical manner for the confirmation of Mr. Blum to the
24 Board of Regents of the University of California.

25 I represent a component of the community of
26 faith. As a member of the African Methodist Episcopal Church,
27 we have three churches in the area, we come simply to say that
28 we believe that Mr. Blum is a person of character. He has

1 integrity. He has a commitment to education, and we believe
2 that he is one who is open to consider all aspects of diversity.

3 Therefore, it is our high recommendation that he
4 be confirmed for the full term on the California Board of
5 Regents for the University of California.

6 CHAIRMAN BURTON: Thank you, sir.

7 Other witnesses in support.

8 MR. BLUM: Just to make sure that there isn't a
9 conflict of interest here, I am on the Board of an A.M.E.
10 church, but not the one of Reverend Williams. Full disclosure.

11 CHAIRMAN BURTON: Yes, ma'am.

12 MS. VALDEZ: Good afternoon. This is my first
13 time testifying, so I hope I'm not too nervous for everybody.

14 CHAIRMAN BURTON: It's okay. Take your time.

15 MS. VALDEZ: My name is Leticia Valdez. I am
16 representing the Latino Issues Forum, a nonprofit public policy
17 and advocacy institute in San Francisco.

18 Latino Issues Forum supports the confirmation of
19 Regent appointees Saban and Blum. Saban and Blum have the
20 potential to adequately represent the California population. We
21 hope that Saban and Blum have the fortitude to contribute value
22 and social consciousness to the people and the students of
23 California, in effect, to the future of California.

24 I say this not only as an LIF representative, but
25 also as a graduate student at UC Berkeley. And as a student, I
26 hope that in the future, I am not the only Latina in my
27 department to represent my community.

28 According to the 2000 U.S. Census, Latinos make

1 up 32 percent of California. However, there are only 4 of 26
2 Regents to represent this population. In the future, LIF would
3 like to see the selection of the Regents more closely reflect
4 the economic, cultural, and social diversity of the state,
5 including ethnic minorities and women, that's a quote, as
6 clearly stated in the California Constitution.

7 At LIF, we are well aware that there is a large
8 pool of qualified candidates that you can draw from, that is,
9 the Governor. We invite the Governor to contact us to help in
10 the search for future Regents.

11 That's it.

12 CHAIRMAN BURTON: Thank you very much, ma'am.
13 Appreciate it.

14 Next, sir.

15 MR. AVILA: Good afternoon. I'm Leo Avila. I'm
16 a member of the American GI Forum, a Hispanic veterans group
17 that has made the education of our children one of the primary
18 concerns because we feel that many of our problems can be
19 alleviated or totally resolved by a quality education.

20 I am very pleased, and thank you, Mr. Chairman,
21 for the questions that you posed of the gentleman beside me.

22 And I am pleased with your responses to the
23 questions, because I think that we need Regents that are
24 sensitive to the needs of our community and will be willing to
25 undertake those efforts that will increase the opportunity for
26 our young people to be able to attend the University of
27 California and gain the education that is vital to become the
28 leaders in our state.

1 Our population is growing, and we need a
2 representation at all levels that will be truly representative
3 of our young people.

4 However, I am concerned about some of the recent
5 appointments that have been made by our Governor. And it
6 appears that -- the Regent positions appear to be for sale, and
7 that bothers me. It bothers me because if that is going to be
8 the criteria for being named to a position on the Board of
9 Regents, the chances of people of color become greatly
10 diminished because we simply cannot match the political
11 contributions that seem to be a criteria. And that bothers me,
12 and I hope that that is taken into consideration.

13 I thank you for listening to me.

14 CHAIRMAN BURTON: I thank you again.

15 As I said to earlier speakers, we're aware of the
16 lack of diversity in the process. And I think, again, members
17 of Greenlining are to be commended for looking beyond as many
18 people we'd like to have look beyond the stereotypes they have
19 of people of color, to look beyond the stereotype of people of
20 color and wealth to see that they are going to contribute to the
21 system; they are going to do the right thing, and they are going
22 to be valuable allies.

23 I believe the hearing today will clearly send a
24 message, hopefully, as I see the Los Angeles by-God Times is
25 writing furiously, to the appointing power that there are going
26 to be in the future some problems. And Senator Romero has made
27 that very clear to the administration.

28 I think we were all very fortunate that these two

1 people are people of high caliber and we were able to get beyond
2 that.

3 Again, I commend you, sir.

4 MR. AVILA: I thank you, and I appreciate your
5 comments.

6 Lots of luck.

7 CHAIRMAN BURTON: Other witnesses in support?

8 MS. CHENG: Good afternoon. My name is Susan
9 Cheng, and I'm here today to represent the Council of Asian
10 American Business Associations.

11 CABA supports the appointments of Richard Blum
12 and Haim Saban. We believe them to be very qualified
13 individuals who will serve the Board of Regents well.

14 Having said that, however, we still must raise
15 the larger concern, as raised by previous speakers, that the
16 Board of Regents needs to reflect the diversity, the broad
17 diversity, of the state. And that the Governor should abstain
18 from his appointment strategy, which appears to reward political
19 appointments to wealthy political contributors.

20 We believe that access to higher education
21 opportunities for underserved minorities is critical to the
22 economic vitality of the state. But we are willing to place our
23 confidence in both new Regent appointees, but they must
24 demonstrate a commitment to ensuring a reinstating of
25 affirmative action, aggressive support for diversity in all its
26 forms, including a diverse student body and faculty in both
27 undergraduate and graduate student bodies at every campus of UC,
28 and as well, to publicly denounce fellow Regent Ward Connerly's

1 Racial Privacy Initiative.

2 We urge you to support these two nominations in
3 light of these things that I've raised.

4 Thank you.

5 CHAIRMAN BURTON: Thank you very much, ma'am, and
6 my same comments.

7 Witnesses in support.

8 MR. AGUILAR: Good afternoon. My name is Orson
9 Aguilar. I'm here representing myself as an alumni of the UC
10 system, but also Jorge Corralejo, who couldn't be here, but is a
11 Board member for the Latin Business Association.

12 Not to sound redundant, we also feel and share
13 some of the similar views that have been stated before me.

14 But I'd just like to say that we're very pleased
15 with the questions you asked, Senator Burton, and definitely
16 even more pleased with Mr. Blum's responses. We'd just like to
17 say, we look forward to working with the new two UC candidates
18 on some of the issues that were discussed, such as diversity,
19 making sure that underserved children get the access to attend a
20 university if that's what they want to do.

21 With that, we'd just like to say we support the
22 new Regents, and thank you for your time.

23 CHAIRMAN BURTON: Thank you very much, sir.

24 Next. Come on, ma'am.

25 MS. YBARRA: Good afternoon. My name is Megan
26 Ybarra, speaking on behalf of Melinda Guzman Moore, President of
27 the California Hispanic Chambers of Commerce.

28 The California Hispanic Chambers of Commerce

1 joins the Latino community in welcoming Richard Blum and Haim
2 Saban to the UC Board of Regents as new leaders with the
3 potential to effectively represent the new majority of
4 California, comprised of minority groups historically excluded
5 from the UC system. We look to Regents Blum and Saban to
6 publicly oppose Ward Connerly's Racial Privacy Initiative.
7 Specifically, we ask that Regents Blum and Saban join Wesson and
8 Bustamante in calling for a vote in opposition to the Ward
9 Connerly initiative at the next Board of Regents meeting.

10 The California Hispanic Chambers of Commerce
11 looks forward to your representation and to your leadership.

12 Thank you.

13 CHAIRMAN BURTON: Thank you very much, ma'am.

14 Next.

15 MR. CLEMENTS: Thank you. My name is David
16 Clements. I am the President of the Sacramento Chapter of the
17 Black American Political Association of California, better known
18 as BAPAC.

19 As President of the Sacramento Chapter, we
20 support and recommend to you positively to affirm the nomination
21 of Richard Blum as a University of California Regent.

22 BAPAC is a statewide organization made up of
23 African Americans primarily. We have 55 chapters and over
24 60,000 members. Our people support nominations that enhance
25 human rights and civil rights, and we feel Mr. Blum's nomination
26 embodies that concept.

27 There have been many people of color who have
28 purported themselves to be knowledgeable of human rights and

1 civil rights that have quieted the voice, that voice, and we
2 feel that this nomination is one that can awaken that voice
3 again and bring equality to the admissions policies of the
4 University of California.

5 So, we feel that those persons must understand
6 the Constitutional rights of all people, and these people should
7 be people of merit, and people who have demonstrated that in
8 their professional lives over the years. We certainly think
9 that Mr. Blum has done that.

10 So, thank you very much.

11 CHAIRMAN BURTON: Thank you, sir.

12 Ma'am.

13 MS. VERDUZCO: Good afternoon. My name is Sonia
14 Verduzco, and I am speaking today on behalf of Ben Benavidez of
15 the Mexican American Political Association and as myself, a
16 recent graduate of UC Santa Cruz, having just graduated two
17 weeks ago.

18 SENATOR KNIGHT: Congratulations.

19 MS. VERDUZCO: Thank you very much.

20 I wanted to just, without reiterating what
21 everyone else said, two weeks ago, I walked across the stage at
22 the commencement ceremony, looked out to the audience, and saw
23 my family there. You can imagine, I was very proud, especially
24 at the fact that they were one of very few minority families
25 sitting in the audience.

26 So, what I would like to ask Regent Blum and also
27 for Saban, and to the Committee as well, to please consider that
28 the next 12 years that you serve as Regent, the decisions you

1 make will have very serious impacts on the higher education of
2 the State of California.

3 And I ask you, one, will those decisions be the
4 ones that open or close the doors to people like myself? Will
5 my four younger brothers and sisters also have the same
6 opportunity to be admitted to the UC system as I was? And will
7 there still be programs in place that will be dedicated to their
8 retention and success?

9 Will you also be dedicated to making sure that
10 other students have the opportunity to be mentored and supported
11 by faculty and staff that can speak to their experience, and
12 that can represent them?

13 I think that we definitely support your
14 appointment to the Board of Regents.

15 And also, if you would please consider the issue
16 of students whose documentation status might still be
17 questionable in the process, because currently, my understanding
18 is that undocumented students are not allowed to attend the
19 University. And I have met very many that have a love in their
20 heart to further their education and to help the rest of the
21 State of California.

22 Thank you very much.

23 CHAIRMAN BURTON: Thank you.

24 Other witnesses in support?

25 MR. POLASKI: Chairman, Committee, Art Polaski,
26 California Labor Federation.

27 I know Mr. Blum to be a man of wisdom and
28 integrity. We support. And we look forward to both appointees

1 being great leaders to make this university continue to be a
2 great higher education for all working class people of color and
3 poor.

4 Thank you very much.

5 CHAIRMAN BURTON: Your support goes to both
6 Regents, Art?

7 MR. POLASKI: Yes.

8 CHAIRMAN BURTON: Any other witnesses in support?
9 Witnesses in opposition?

10 I'd like to move the nomination.

11 SECRETARY WEBB: Senator Karnette.

12 SENATOR KARNETTE: Aye.

13 SECRETARY WEBB: Karnette Aye. Senator Knight.

14 SENATOR KNIGHT: Aye.

15 SECRETARY WEBB: Knight Aye. Senator Romero.

16 SENATOR ROMERO: Aye.

17 SECRETARY WEBB: Romero Aye. Senator Burton.

18 CHAIRMAN BURTON: Aye.

19 SECRETARY WEBB: Burton Aye. Four to zero.

20 CHAIRMAN BURTON: Congratulations, Richard.
21 Catch your plane.

22 MR. BLUM: Thank you very much.

23 CHAIRMAN BURTON: The next, Ricardo Icaza, State
24 University.

25 For those of us that are old enough, it will
26 always be the State College system to me.

27 SENATOR ROMERO: Senator Burton, Members, it's
28 my great honor to bring to the Committee to introduce and to

1 request confirmation for Rick Icaza, a dear friend of mine and
2 for many in Los Angeles County as President of the L.A. County
3 Federation of Labor.

4 I have to just tell you that his very first day
5 on the job as a CSU Trustee, he was greeted by bus loads of
6 faculty members protesting at the Chancellor's office in Long
7 Beach. I put my picket sign down for a moment, went over and
8 greeted him and welcomed him, and then got my picket back up.
9 It was sort of a baptism by fire.

10 Soon after that, we did get the contract settled.

11 So, he's widely respected. I think in
12 particular, people know him as somebody who has fought hard for
13 the members that he represents, not only for wages and working
14 conditions, but for access to educational opportunities, the
15 opportunity to have greater education so that they can improve
16 their job skills, and to move up, and to attain the American
17 dream.

18 So, it's my great honor to be able to introduce
19 him and to ask for your confirmation today.

20 CHAIRMAN BURTON: Thank you.

21 We have your statement that we'll make part of
22 the record, so if you just want to briefly summarize.

23 MR. ICAZA: Thank you very much, and thank you,
24 Senator.

25 I would like to state, first of all, I had an
26 opportunity to meet with each individual group this morning
27 representing the Committee. One thing I learned was to be
28 brief. Senator Burton, I think you don't like to hear too much.

1 CHAIRMAN BURTON: Patience is my long suit.

2 [Laughter.]

3 MR. ICAZA: My father came from Mexico in the
4 '20s. He was deported by the Mexican government because he was
5 a journalist in Hermosillo. He apparently was writing the wrong
6 things, and so they asked him to leave.

7 I think of all the things that have happened to
8 me, I think that's probably one of the most significant things.

9 But probably more defining was the opportunity to
10 go to UCLA. And I believe the reason why I'm here today is
11 because I had that opportunity.

12 My wife is a graduate from UC -- I mean San Diego
13 -- no, actually Cal State Dominguez. She's got her Masters in
14 early childhood development. My other daughter graduated from
15 Cal Berkeley and she's currently an attorney with Lathem and
16 Watkins. My other daughter currently is going to Long Beach
17 State, going for her credential.

18 I understand the importance of education, and the
19 fact that the Legislators and the citizens have produced this
20 tremendous, magnificent system, and I would like to be able to
21 contribute, because I know the value of it. I believe that it's
22 imperative that we have an opportunity for access and be able to
23 have opportunities where the cost is affordable, and I would
24 like to work for those issues.

25 And certainly, the fact that we find there is a
26 tremendous influx of different people coming on to the system,
27 and I'd like to work to attain the ability to have people be
28 able to go and become qualified for that purpose.

1 Actually, my statement pretty much fills in what
2 I'd like to say. If there's any questions, I'd be happy to
3 answer them.

4 CHAIRMAN BURTON: Senator Knight. Senator
5 Karnette. Senator Romero.

6 You are the first person ever to escape a
7 question from Senator Romero.

8 MR. ICAZA: It's amazing.

9 CHAIRMAN BURTON: She introduced you.

10 SENATOR KNIGHT: Because she picketed against
11 you.

12 CHAIRMAN BURTON: Witnesses in support. You're
13 just here for morale support, Miguel?

14 MR. POLASKI: Art Polaski, California Labor
15 Federation, know of Mr. Icaza, a man of wide experience, and
16 strong knowledge. And it is important that the working class be
17 represented on institutions of higher learning. This man does
18 it and will do it well. We support.

19 Thank you.

20 CHAIRMAN BURTON: Conditioned upon reaffiliation?

21 [Laughter.]

22 MR. POLASKI: Yes.

23 CHAIRMAN BURTON: Do you want to go out and meet
24 with Art in the hall and come back?

25 MR. ICAZA: Yes, we'll meet afterwards.

26 [Laughter.]

27 CHAIRMAN BURTON: Witnesses in opposition?
28 Hearing none, call the roll.

1 SECRETARY WEBB: Senator Karnette.

2 SENATOR KARNETTE: Aye.

3 SECRETARY WEBB: Karnette Aye. Senator Knight.

4 SENATOR KNIGHT: Aye.

5 SECRETARY WEBB: Knight Aye. Senator Romero.

6 SENATOR ROMERO: Aye.

7 SECRETARY WEBB: Romero Aye. Senator Burton.

8 CHAIRMAN BURTON: Aye.

9 SECRETARY WEBB: Burton Aye. Four to zero.

10 CHAIRMAN BURTON: Congratulations.

11 MR. ICAZA: Thank you very much.

12 CHAIRMAN BURTON: Next Regent, Haim Saban. I'd
13 like to make the introduction.

14 I've known Haim for many years as a friend and as
15 a philanthropist. He and his wife have been strong supporters
16 of several educational programs, including Adopt a School
17 Program. He established the Saban Center for Middle East Policy
18 at Brookings.

19 He does help represent although a different
20 diversity, a diversity in California, having been an immigrant.
21 Has worked very hard to be successful in what he does.

22 He understands and is committed to helping
23 families who need help in the UC system. And he's committed to
24 continuing it as a very top learning system.

25 I'd just like to say, not the second but I guess
26 it was the third time I met Mrs. Saban, we were having dinner,
27 and he's telling me how many people call him about a variety of
28 business issues and philanthropic issues, and other. And he

1 said, "If your name isn't on my roladex or on the computer, you
2 can't get through."

3 So, I thought about that, and two days -- you
4 probably don't remember this, but I do because it was such a
5 thrilling moment -- but anyway, two days later I called his
6 office and asked if he was in.

7 They said, "Who's calling?"

8 I said, "John Burton." And I said immediately,
9 "I'm not on the computer, I'm not roladex, but I was at one
10 lunch and two dinners with Mr. Saban, so I think he'll take the
11 call."

12 He got on the phone and said, "What can I do for
13 you?"

14 And I said, "Absolutely nothing. I just wanted
15 to see if I could break through your security."

16 MR. SABAN: I confirm this to be a true story.

17 [Laughter.]

18 CHAIRMAN BURTON: Anyway, please open.

19 MR. SABAN: Thank you very much, ladies and
20 gentlemen. It's a great pleasure to be here.

21 My wife Sharon and I have been involved directly
22 and indirectly in supporting various educational institutions.
23 If I'm confirmed today, I hope to be able to bring the positive
24 and constructive impact on the UC institution. I really look
25 forward, and I'm very excited about this opportunity that was
26 given to me.

27 CHAIRMAN BURTON: Maybe you're the guy with a
28 plane to catch.

1 You heard the questions about diversity,
2 outreach, and also the Connerly initiative, and the comments
3 made by Mr. Blum on that. And the comments, I think, made by
4 the representatives of the great cross-section of Greenlining,
5 who made their support for you known, but also their concerns
6 about these issues.

7 I think it would just be helpful if you could
8 briefly address your viewpoint on the issues, the importance of
9 diversity within the students.

10 And I think the most telling thing was the young
11 lady who just graduated, and, you know, she looked out. There
12 weren't a hell of a lot of parents who looked like hers.

13 I think also, in a comment by Senator Knight
14 about the prisons, that I think very few college graduates find
15 themselves in prison unless they were S&L people or accountants
16 now.

17 [Laughter.]

18 CHAIRMAN BURTON: There's not a lot of them
19 involved in drive-by shootings or crimes of violence.

20 So I think to me, education is the mobility;
21 ticket up and out. Maybe you could just comment on that.

22 MR. SABAN: Well, actions speak louder than
23 words, and my wife and my support over the years of different
24 education institutions should be an indication of how important
25 we believe education to be. That's point number one.

26 As far as diversity goes, I believe that all of
27 our institutions should reflect what the population of our state
28 is. And I know this is a high mountain to climb, but it's a

1 mountain we all have an obligation to climb, and I intend to
2 support and work very hard to have our institutions reflect the
3 diversity of the population of the State of California.

4 CHAIRMAN BURTON: Senator Knight.

5 SENATOR KNIGHT: I didn't know he was through
6 with the answers there.

7 I agree with the concept of allowing as many
8 students as are capable of getting into the universities to get
9 there. And if they are capable, and they have the ability, then
10 we ought to help the students along.

11 But I guess I'm concerned more about giving
12 preference to undocumented, illegal aliens, as opposed to
13 citizens of this country who happen to be from out of state. I
14 don't know that that's fair.

15 What do you think?

16 MR. SABAN: What was the question?

17 SENATOR KNIGHT: Do you think we should give
18 preference in terms of allowing illegal immigrants,
19 undocumented, in-state tuition as opposed to out-of-state
20 tuition fees?

21 MR. SABAN: You're asking me an immigration
22 question, and I'm no immigration specialist.

23 SENATOR KNIGHT: No, it's not an immigration
24 question.

25 It's a question of, there are people here who are
26 undocumented, who have attended schools here, but they're still
27 undocumented, and we are providing for in-state tuition as
28 opposed to out-of-state tuition.

1 CHAIRMAN BURTON: If they live in the state, they
2 get in-state tuition.

3 SENATOR KNIGHT: Undocumented.

4 CHAIRMAN BURTON: Who live in state.

5 SENATOR KNIGHT: Yeah, but they're still
6 undocumented immigrants.

7 CHAIRMAN BURTON: Living in state, so they get
8 in-state tuition. And if they're undocumented out-of-state,
9 they would then pay out-of-state tuition.

10 SENATOR KNIGHT: Yes. We've had legislation on
11 that.

12 CHAIRMAN BURTON: Whatever happened to it?

13 SENATOR KNIGHT: I think it passed; didn't it?

14 SENATOR KARNETTE: If they attended all schools
15 all their lives, and came here when they were two, yes, we did.

16 CHAIRMAN BURTON: In fact, I do recall that,
17 because what they did is, they implemented the policy that
18 George W. Bush had as Governor of Texas.

19 [Laughter.]

20 SENATOR KNIGHT: You know I'm not from Texas.

21 CHAIRMAN BURTON: Could have fooled me.

22 MR. SABAN: I'd like to give this some more
23 thought.

24 But if you ask me for a knee-jerk reaction, I
25 will say that if they are in this country, I'd rather have them
26 in the schools than out on the streets.

27 SENATOR KNIGHT: I guess my point is that we are
28 obligated to provide them with an education, that's correct,

1 because they're here, just because they're here. And we have
2 that obligation under law to do that.

3 But we don't have an obligation to provide them
4 with a higher education. And to give them preference over
5 citizens of the United States I don't believe is correct.

6 It's something to think about.

7 MR. SABAN: It's something to think about.

8 CHAIRMAN BURTON: Senator Romero.

9 SENATOR ROMERO: Thank you.

10 I would just that say that I very much
11 appreciated the comments that were made earlier. I think it's
12 been a very productive conversation.

13 You and I had an opportunity to meet in my office
14 and talk about policies related to the UC. One area of interest
15 that I have as well is, in terms of diversity and access, also
16 really for working class kids to have the opportunity. For kids
17 who, like myself, grew up on the other side of the tracks, and
18 who basically were told we'd never get to college.

19 The UC system has often times been looked at as
20 this beacon of higher education that's not accessible to working
21 class kids, to people who have to have jobs.

22 What is the UC doing? Or, as your role as a
23 Regent, because I know you've only been to a couple of meetings
24 now, given your background, and also where you started from, and
25 we had talked about you not having a college education, yet
26 being successful, what would you like to see the UC do so that
27 that perception of the UC being not accessible to people who
28 have to work, full-time, part-time, can we think about evening

1 classes, weekend classes?

2 What thoughts might you have to help push the UC
3 to open the doors to everyday people who have to work for a
4 living, and yet who can qualify and should be able to access the
5 University of California?

6 MR. SABAN: As a two-meeting-old Regent, I
7 obviously have a lot to learn before I can make some truly
8 educated recommendations. So, I will speak from my heart and my
9 stomach rather than from facts.

10 I'm going to say something that may be very
11 controversial, but I'm going to say it anyway because I believe
12 it's the right thing.

13 That is, I believe in a scaled fee. For some
14 people, if they can go from \$3500 tuition to \$4,000 tuition, it
15 would mean the difference between going and not going. To
16 others, spending \$25,000 or \$30,000 would make no difference at
17 all.

18 And my view is that if we were able to implement
19 within the law, obviously, some kind of a scaled fee, we would
20 encourage many more people who can't afford to go to college, to
21 go to college. And that's my view.

22 SENATOR ROMERO: Thank you.

23 MR. SABAN: Not educated, not based on facts,
24 just from my heart.

25 SENATOR ROMERO: Thank you.

26 CHAIRMAN BURTON: Senator Karnette.

27 SENATOR KARNETTE: If you think about your
28 experience, and all the things that have happened to you in your

1 life, what do you think probably prepared you best for this
2 particular position? Because everybody supports you, and they
3 think you've done a lot of good things.

4 MR. SABAN: Well, I have been very fortunate to
5 be very successful in business. And I believe in private
6 enterprise. I believe in the American dream. I am living it.

7 And I believe that if I were able to implement
8 within the university some of the skills that allowed me to
9 become very successful, working on a worldwide basis, I should
10 mention, I think that the university would significantly benefit
11 from my experience in that area. That's on the financial side.

12 I'm very interested in various aspects of
13 education, and that is something that I also, once I delve into
14 the issues and the subject matters, I believe I will be able to
15 contribute to.

16 In addition to that, I think that on the social
17 side, I have some things I'd like to see happen in terms of
18 diversity, et cetera. And I think that I'll be able to
19 contribute significantly at that level, too.

20 So, I'm very excited about being able to work on
21 such a program that is so diversified in an area that is of
22 great importance to me.

23 SENATOR KARNETTE: It's a big job.

24 CHAIRMAN BURTON: Any witnesses in support that
25 didn't testify earlier in support?

26 Mr. Gnaizda.

27 MR. GNAIZDA: Yes. Good afternoon, Mr. Chairman,
28 Members of the Committee, and Mr. Saban.

1 I'm Bob Gnaizda, the General Counsel of
2 Greenlining Institute. I'll be quite brief.

3 The seven coalition members of Greenlining,
4 including the California Hispanic Chamber of Commerce, asked me
5 to summarize their testimony in strong support of Mr. Saban.

6 This is what some of us believe is quite likely,
7 based on the conversation that we had with Mr. Saban. He is
8 going to be a leader, maybe the leader, on affirmative action
9 and on the effective representation of the minority community.
10 And some of us hope maybe one day you'll be the Chair of the
11 Board of Regents. And we hope you will lead the effort, as
12 you've said you will, on affirmative action against the Ward
13 Connerly Initiative, and probably equally important,
14 democratizing what to many appears to be an increasingly elite
15 system, at least at some of the campuses.

16 So, we're very proud to have you. Thank you.

17 MR. SABAN: Thank you.

18 CHAIRMAN BURTON: Any witnesses in opposition?
19 Hearing none, move the nomination. Call the roll.

20 SECRETARY WEBB: Senator Karnette.

21 SENATOR KARNETTE: Aye.

22 SECRETARY WEBB: Karnette Aye. Senator Knight.

23 SENATOR KNIGHT: Aye.

24 SECRETARY WEBB: Knight Aye. Senator Romero.

25 SENATOR ROMERO: Aye.

26 SECRETARY WEBB: Romero Aye. Senator Burton.

27 CHAIRMAN BURTON: Aye.

28 SECRETARY WEBB: Burton Aye. Four to zero.

1 CHAIRMAN BURTON: Congratulations.

2 MR. SABAN: Thank you very much.

3 [Thereupon this portion of the
4 Senate Rules Committee hearing
5 was terminated at approximately.
6 2:35 P.M.]

7 --ooOoo--
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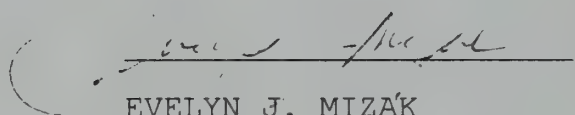
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

28th day of June, 2002.


EVELYN J. MIZAK
Shorthand Reporter

460-R

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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR GLORIA ROMERO

MEMBER ABSENT

SENATOR WILLIAM KNIGHT

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

MICHAEL R. PEEVEY, Member
Public Utilities Commission

D.J. SMITH
PacifiCorp, California Large Energy Consumers Association

DOROTHY ROTHROCK
California Manufacturers and Technology Association

MIKE FLORIO, Senior Attorney
TURN, The Utility Reform Network

DOUGLAS HELLER, Senior Consumer Advocate
Foundation for Taxpayer and Consumer Rights

V. JOHN WHITE
Sierra Club

DAN JACOBSON
CALPIRG

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointee required to appear today, Public Utility Commissioner Mike Peevey.

Michael, do you want to come up, please. Go ahead, Michael.

MR. PEEVEY: Good afternoon, Senators. It's a pleasure for me to be here today.

I'm not sure what I'm supposed to say, other than as a member of the Public Utilities Commission, I'm here to answer your questions and help you in any way I can.

CHAIRMAN BURTON: Do you want to introduce your family, as long as she's staring at us.

[Laughter.]

MR. PEEVEY: Is she still here?

I have with me my wife, Carol Liu, who's a Member of the other House.

SENATOR ROMERO: Is this for better or worse?

MR. PEEVEY: Today she's for better.

CHAIRMAN BURTON: We sent you a letter that you answered on July 3rd, and we're basically concerned about several issues that are coming before the Public Utilities Commission.

And the first one I'd like to deal with would be direct access, and then what the exit fees would be on that so that the residential ratepayers and small businesses are not the ones that get stuck with this.

Do you know when the Commission's expected to

1 vote on the exit fee proposal at all?

2 MR. PEEVEY: October. As of now it's scheduled
3 for October.

4 CHAIRMAN BURTON: All right.

5 Now, we had a discussion before. It was at least
6 my hope and the hope of some of the other Senators that the
7 direct access and the access exit fees would be like kind of
8 tied together instead of the direct access happening, and then
9 we'll figure out what's going to happen later.

10 Has the Commission been able to determine the
11 cost involved in the design of the exit fees, or how they're
12 going to do that?

13 MR. PEEVEY: That's the subject right at the
14 moment of a continuing hearing and process. So, they have not
15 come to a specific number yet at this time in July, but
16 certainly will by October.

17 The estimates vary widely as to the numbers.

18 CHAIRMAN BURTON: In one of your letters, you say
19 you'd support a proposal to make bundled customers indifferent.
20 What's that mean?

21 MR. PEEVEY: That means that bundled customers,
22 those that are not customers, or benefit or direct access
23 customers, fees charged to direct access customers will be
24 sufficiently high as to have no negative impact on the bundled
25 customers, those that remain with Edison, PG&E, and San Diego.

26 CHAIRMAN BURTON: How does that relate to what
27 you and Commissioner Brown, in your alternate decision on how
28 direct access should be charged as far as Edison's past debt?

1 Doesn't that kind of look like part of it's going to be laid on
2 the smaller consumers?

3 MR. PEEVEY: I'm not sure I understand exactly
4 what you're referring to, but let me see if I can take a guess.

5 CHAIRMAN BURTON: Here's what you state,

6 "While we're committed to
7 ensuring that bundled customers
8 do not pay more than their fair
9 share of costs, we also do not
10 wish to eliminate the direct
11 access market through
12 injudicious imposition of
13 charges."

14 MR. PEEVEY: Yes, well --

15 CHAIRMAN BURTON: I don't know if you can have it
16 both ways; can you?

17 MR. PEEVEY: Well, I think there's no doubt that
18 some -- it depends on what kind of contracts direct access
19 customers have with suppliers other than the utilities:

20 If they are sufficiently cost conscious enough,
21 those customers will remain with direct access, despite the fact
22 that they will be charged as direct access customers so that
23 there's no impact on the remaining bundled customers of the
24 three utilities.

25 I don't know the details of all those contracts,
26 so I can't tell you with exactitude how many will stay and how
27 many will return to the utilities. There will undoubtedly be
28 some erosion of direct access customers when we impose exit fees

1 back to the utilities. That's going to happen. I can't tell
2 you what proportion.

3 CHAIRMAN BURTON: Wouldn't it make sense to,
4 like, before you did direct access, to have all the information,
5 figure out what the impact would be on small businesses and
6 residences?

7 MR. PEEVEY: Well, we know -- I mean, as I
8 indicated in several correspondences to you, my intention is to
9 make sure that regardless, there will be no negative impact on
10 on residences and small commercial customers. That's what I
11 meant by indifference, and what have you.

12 Now, you wrote me several letters, but one on
13 July 8th, just two days ago, asking me on this subject about the
14 legislation that's been amended here in the Senate dealing with
15 community aggregation and exit fees in that legislation, how
16 they would be described. And you asked me, there was a couple
17 questions there which I'm happy to respond to in the context
18 what we're talking about here. It may clarify some of
19 this.

20 CHAIRMAN BURTON: Well, feel happy to do it.

21 MR. PEEVEY: It's simply this. The question was
22 asked --

23 CHAIRMAN BURTON: First of all, have you had a
24 chance to like really review the language in those bills?

25 MR. PEEVEY: Yes, I have. I'm comfortable with
26 the language in the bills.

27 Let me point out that the question was,

28 "Please review the cost recovery

1 language. Inform me whether you
2 have any concerns about its
3 application in direct access
4 customers, and is there any
5 reason the Commission should not
6 use this language in the cost
7 recovery policy for its existing
8 direct access customers?"

9 I have no problem with the language drafted in
10 those bills, as it applies particularly to CDWR. And as I
11 understand it from your cover letter, this language was agreed
12 on by the Governor's Office, CDWR, by our counsel, and the other
13 Members of the Senate here, and the Senate Energy Committee. I
14 have no problem with that language as it applies to CDWR.

15 I have no problem with the language in the G(1)
16 and (2).

17 However, I would point out to you that that
18 language is not -- that is not applicable to CDWR. That
19 language applies to the three utilities, and basically deals
20 with who pays what if there's community aggregation in one of
21 their service territories, and someone chooses to leave them,
22 under what terms and conditions can that happen.

23 That language, I do not believe, came from CDWR.
24 It doesn't have -- it seems -- doesn't seem relevant to the
25 CDWR concern that you put forth in the letter.

26 But I just offer that as a comment.

27 CHAIRMAN BURTON: Now, this is a consumer group
28 making the statement, so in the structure to fee cap, which I

1 guess is the one, you and Commissioner Brown's alternate thing,
2 requires a no interest loan from the bundled customers to the
3 direct access people, and a cost shift of roughly \$150 million.

4 Is that going to end up having the smaller
5 customers pick up a nut for direct access, or what?

6 MR. PEEVEY: No, no. That's a separate matter
7 from what you've written me about. Let me explain the context
8 in which I think this makes sense.

9 Southern California Edison has applied to the
10 Commission for what's called, they want what they call their
11 historic procurement costs. This is for customers that were on
12 direct access, left direct access, returned to direct access.
13 And they say that they have significant costs that those
14 customers should pay, that the money which, after paid, would be
15 given to the bundled customers to reduce their rates.

16 That's very reasonable. And what Commissioner
17 Brown and I put out as an alternate, hopefully, will be voted on
18 next week by the Commission here, would, over time, transfer
19 \$391 million from direct access customers to bundled customers
20 as a benefit.

21 In other words, direct access customers would pay
22 \$391 million, and bundled customers would receive that in rate
23 reductions.

24 CHAIRMAN BURTON: Doesn't Edison estimate it at
25 150 or so higher --

26 MR. PEEVEY: Yes, they do. They do. And there's
27 no substantiation by that by the Energy Division of the
28 Commission or any of us to look carefully at that.

1 CHAIRMAN BURTON: So, what if they're right and
2 you're wrong, what would happen?

3 In other words, if you pick your figure and stick
4 with it, and they are right, they get stuck with it? Or if they
5 are right, the smaller customer gets stuck with it?

6 MR. PEEVEY: Well, for Edison, the numbers -- it
7 doesn't make any difference for Edison. Either the bundled
8 customers will pay it or the direct access customers will pay
9 it.

10 CHAIRMAN BURTON: I really ain't worried about
11 Edison.

12 MR. PEEVEY: I know.

13 CHAIRMAN BURTON: I'm worried about the bundled
14 customers.

15 MR. PEEVEY: I understand.

16 For the bundled customers, the question is, is it
17 391 million, is it 420 million, is it 540 million?

18 The best number that we could come up with -- and
19 this is not my number. This was done by the Energy Division in
20 the PUC -- that they could substantiate, and based on audits, is
21 \$391 million.

22 I could tell you how the 540 number is
23 calculated --

24 CHAIRMAN BURTON: The other question would be, if
25 you're right, if you peg it at your number, and it turns out
26 they're right, who gets stuck for the difference?

27 MR. PEEVEY: The bundled customer. The bundled
28 customer would get stuck if that number is right, but there's

1 not evidence. It cannot be right.

2 SENATOR JOHNSON: Can I ask why?

3 MR. PEEVEY: It's not right because --

4 CHAIRMAN BURTON: No, why would they get stuck?

5 SENATOR JOHNSON: Yes.

6 What is the impediment in the law to prevent
7 Edison from eating it?

8 MR. PEEVEY: Well, there wouldn't be any
9 impediment necessarily to stop Edison from eating it,
10 presumably.

11 SENATOR JOHNSON: I understood it to have been
12 that it would be bundled customers that would be.

13 Why does it have to be done that way?

14 MR. PEEVEY: Well, we do have -- there was a
15 settlement agreement with Edison the Commission made last fall
16 that governs aspects of this, and so I think that would prohibit
17 Edison from eating it, to be very frank with you. That's
18 something that happened in September of last year.

19 SENATOR JOHNSON: I remember it happening in
20 September of last year.

21 MR. PEEVEY: Before I was on the Commission.

22 SENATOR JOHNSON: Some of us were eagerly
23 awaiting a debate on the Senate Floor, and that never occurred.

24 MR. PEEVEY: But Senator, I mean it happened at
25 the Public Utilities Commission.

26 SENATOR JOHNSON: I understand. I'm following you
27 100 percent.

28 What I'm not quite following is why Edison

1 couldn't wind up eating it?

2 MR. PEEVEY: Because I -- to the best of my
3 understanding, the settlement agreement arrived at by the Public
4 Utilities Commission and Edison that ensured that they would get
5 3.6 billion -- no, 3.577 billion dollars back. That was the
6 settlement that was made by the PUC and Edison in the fall of
7 last year.

8 The question that Senator Burton is asking is,
9 how are these numbers co-mingled, and who pays what within that?

10 And I'm saying that for their historic
11 procurement costs aspect of this, that the alternate decision
12 that Commissioners Brown and myself have put out for public
13 comment and all would provide that direct access customers pay
14 \$391 million.

15 I thought you were going to ask me, how was that
16 number calculated, and I was going to try to explain that.

17 CHAIRMAN BURTON: The proposed decision was at
18 the 540 level. Your amendment or alternative's in the other
19 one?

20 MR. PEEVEY: That's correct.

21 CHAIRMAN BURTON: Let's assume the 540 one is
22 right, then how does it effect direct access, Edison, and the
23 bundled customer?

24 MR. PEEVEY: Well, it would mean that direct
25 access customers would pay \$540 million of the 3.6 billion,
26 rather than the 391 million of the 3.6 billion.

27 CHAIRMAN BURTON: All right. So, basically your
28 proposal, your alternate proposal, you and Commissioner Brown,

1 put the bundled customers at risk for 150 million if that
2 number's right?

3 MR. PEEVEY: That's correct.

4 CHAIRMAN BURTON: Well, and if it isn't --

5 MR. PEEVEY: And we'll make -- if that -- believe
6 me, I went through this in detail with the Energy Division and
7 all the other people, the economists at the Commission, before
8 we came up with the 391 million.

9 That's the only number that could be
10 substantiated.

11 The 540 million is simply taking the September
12 15th or September 20th percentage of Edison load covered by
13 direct access customers at 15 percent, and applying that to the
14 3.6 billion, will give you 540 million. That's the math.

15 But that is not what has been paid --

16 CHAIRMAN BURTON: Well --

17 MR. PEEVEY: -- because in May, it was 1 percent,
18 not 15 percent in June. You have to have a weighted number.

19 If you take 10 percent, which is the weighted
20 number between May of 2001 and where September of 2001, not 15,
21 you take 1 and 3, and you weigh them all, you come out to 10,
22 you'd be at 360 million rather than 390.

23 But we came up with 390 because the evidence is
24 from Edison's own records --

25 CHAIRMAN BURTON: And if you were wrong, the
26 bundled ratepayers pick up the stiff, the difference.

27 Is there any way you can protect them from that
28 in case your numbers are wrong, or not wrong, but the situation

1 changes, and all of a sudden it would have been 540?

2 MR. PEEVEY: Yes. We could amend it into the
3 proposed order if further evidence --

4 CHAIRMAN BURTON: After it happens?

5 MR. PEEVEY: Yes, yes. Then the adjustment would
6 be --

7 CHAIRMAN BURTON: Can't you make that part of the
8 order?

9 MR. PEEVEY: Yes, I think we can.

10 CHAIRMAN BURTON: Would you?

11 MR. PEEVEY: I think we'd be wise to.

12 CHAIRMAN BURTON: Was that a yes?

13 MR. PEEVEY: Yes. To the extent that I'm one of
14 two Commissioners on it.

15 CHAIRMAN BURTON: I sorry, to the extent of what?

16 MR. PEEVEY: To the extent, I'm one of two
17 Commissioners on it. I will use my persuasive powers.

18 CHAIRMAN BURTON: Well, you know, your influence
19 on the Commission since you were appointed has not been one of
20 of just somebody sitting on the Commission.

21 MR. PEEVEY: It might be a bit exaggerated.

22 CHAIRMAN BURTON: Not as I read it. You're
23 forceful, and you know the stuff.

24 Let me ask you a question that's got nothing to
25 do with you.

26 Whatever happened to the Commissioner that
27 supposedly got conflicted off? Is he still on the Commission?

28 MR. PEEVEY: Yes, he is. He in effect has a stay

1 from the Court of the Appeals.

2 CHAIRMAN BURTON: So there's still a full
3 Commission then?

4 MR. PEEVEY: Yes, there is.

5 CHAIRMAN BURTON: I can't remember his name.

6 MR. PEEVEY: Henry Duque. His term expires the
7 end of this year.

8 CHAIRMAN BURTON: I've got some questions on a
9 couple other issues, but sticking with this issue, Senator
10 Johnson? Senator Karnette?

11 SENATOR KARNETTE: I have some specific questions
12 to ask. And perhaps you've answered them and I didn't follow
13 it too well because I'm not on these Energy Commissions
14 ordinarily.

15 If a plant was planned in the midst or right when
16 the energy crisis was at its peak, and now there's been
17 decisions made that that plant would not be needed, is it the
18 PUC that makes that decision?

19 MR. PEEVEY: No, it's the Energy Commission.

20 SENATOR KARNETTE: It's the Energy Commission.

21 MR. PEEVEY: The California Energy Commission,
22 yes, ma'am.

23 SENATOR KARNETTE: But if they were promised that
24 they would be able to do this, and then this promise has been --
25 do they have any recourse?

26 MR. PEEVEY: The plant.

27 SENATOR KARNETTE: Well, if a city had planned to
28 build its own energy plant, and you're saying that the Energy

1 Commission, at the peak of the crisis, that was a decision that
2 was made by a city.

3 And now they're being told by the Energy
4 Commission, I take it, that they can't -- we don't need the
5 plant. They can't build it.

6 I don't understand why they can't go ahead and do
7 it?

8 MR. PEEVEY: They have to get a permit from the
9 -- it depends on the size of the facility. If it's below 49
10 megawatts or less, you don't need a permit from the Energy
11 Commission. But anything above that size, they would need --
12 the Energy Commission is the state siting authority under the
13 Warren-Alquist Act which created it years ago, and so, you need
14 a permit from the California Energy Commission.

15 Assuming that permit was granted, then the only
16 thing stopping the city or community from going ahead with the
17 power plant would be its own decision, or its inability to sell
18 the power either to itself or to some other buyer at a price
19 that it thought was reasonable.

20 SENATOR KARNETTE: But if it made investments
21 before it thought it was going to get the permit, they have no
22 recourse?

23 MR. PEEVEY: Not to my knowledge, no. They do
24 not. That's at risk, if you will.

25 I'd have to know more of the facts to be more
26 helpful to you on this specifically, very frankly, but I'm happy
27 to do that.

28 But on the basis of what you said, that's the

1 only way I can answer.

2 SENATOR KARNETTE: There was another question,
3 when AB 2958 was passed, which was Rod Wright's bill that, I
4 think, said that until 2007, continue the suspension of the NRF
5 rules until 2007. And that bill passed.

6 How do you feel about that particular bill? Do
7 you remember it? I'm not that familiar.

8 MR. PEEVEY: That bill passed the Assembly.

9 SENATOR KARNETTE: The vote was 66-1.

10 MR. PEEVEY: Yes, but it has not passed this
11 House, I believe.

12 That was a question in the written correspondence
13 that Senator President Pro Tem Burton asked me. My answer was
14 on that Wright bill, that I'm opposed to that bill.

15 SENATOR KARNETTE: Thank you.

16 CHAIRMAN BURTON: Senator Romero?

17 SENATOR ROMERO: No, not on this issue.

18 CHAIRMAN BURTON: Just a quick one.

19 You disposed of your interest in Electro Rent
20 Corporation and True Pricing?

21 MR. PEEVEY: Correct.

22 CHAIRMAN BURTON: Do you have any vested interest
23 or paid positions with either company to this date?

24 MR. PEEVEY: That's correct, I do not.

25 CHAIRMAN BURTON: Knowing me as well as you know
26 me, you can probably figure out that some of these questions
27 have been generated by conversations or requests of others.

28 Before you went on the Commission, you were a

1 unpaid volunteer, or advisor, whatever, to the Governor's Office
2 and negotiated the MOU with Semptra?

3 MR. PEEVEY: I negotiated the MOU with Edison. I
4 negotiated the MOU with PG&E.

5 CHAIRMAN BURTON: You did not negotiate Semptra?

6 MR. PEEVEY: I did some negotiation with Semptra,
7 but we never came to an MOU in -- by the time that I was there.

8 CHAIRMAN BURTON: One of the concerns that's
9 expressed is, some of the stuff that's being done by the PUC is
10 being done, you know, instead of open meetings, in closed
11 meetings, negotiations, and stuff like that.

12 Do they do that? Is that a proper thing to do or
13 not?

14 MR. PEEVEY: Well, there's very little that's
15 done by the PUC that's not in open meetings, very frankly.

16 MR. PEEVEY: Practically everything we do is done
17 in open session, and the public has a right to comment. All the
18 interested parties file voluminous legal briefs, and on it goes.

19 There have been -- the biggest thing that
20 happened that was in a closed session by the Commission was the
21 negotiation of the arrangement with Southern California Edison
22 when they were facing bankruptcy. That was before my time
23 there, but I think that necessity required that that be done the
24 way it was in a couple of days.

25 But that's editorial on my part.

26 CHAIRMAN BURTON: When they negotiate in closed
27 meetings, who's there? Just the Commission and the utility?
28 Are consumer representatives there?

1 MR. PEEVEY: Well, any time there's a
2 negotiate -- there's only negotiation over litigation,
3 essentially. Now, that is principally conducted by the lawyers
4 at the Public Utilities Commission, the Legal Division of the
5 PUC.

6 It's then brought to the Commission. The outcome
7 of those negotiations, if there is an outcome, is brought to the
8 Commission in an executive session.

9 The only people present at the executive session
10 are the Commissioners and their direct staff, and the Legal
11 Division, and the other division heads. There are no utility
12 people or anybody like that present.

13 CHAIRMAN BURTON: Well, I mean, do the consumer
14 groups ever have any input into what kind of deals that the
15 legal staff is cutting?

16 MR. PEEVEY: Sometimes they do, sometimes they
17 don't. I mean, there's not many deals that are, quote, "cut."

18 CHAIRMAN BURTON: There have been more cut in the
19 last whatever, since the energy crisis, than probably have been
20 cut since Hiram Johnson because there's been so much stuff going
21 on.

22 MR. PEEVEY: Well, I think it's evident that the
23 consumer groups didn't have any input into the negotiated
24 settlement with the Edison Company, you know, because they're a
25 litigant now in the federal court on the matter.

26 CHAIRMAN BURTON: How about with Sempra?

27 MR. PEEVEY: Which arrangement with Sempra?

28 CHAIRMAN BURTON: Is there any negotiation going

1 on with the utility or members of the Commission with Semptra at
2 the present?

3 MR. PEEVEY: Not with Semptra, no, no.

4 With San Diego Gas and Electric there was by the
5 Legal Division. That's a matter we've referred to already, I
6 think, in passing.

7 And yes, there's consumer input into that. And
8 yes, UCAN, which is a principal consumer group in San Diego, as
9 is the City of San Diego, are all members, and they're on the
10 record in the filed testimony.

11 CHAIRMAN BURTON: Yeah, they made testimony, but
12 were they in when somebody's trying to cut the deal?

13 MR. PEEVEY: No.

14 CHAIRMAN BURTON: Should they have been?

15 MR. PEEVEY: Um, that's a tough question. It's a
16 tough question to answer.

17 CHAIRMAN BURTON: That's why you get the big
18 bucks.

19 [Laughter.]

20 CHAIRMAN BURTON: How much is two and two?

21 MR. PEEVEY: I've reflected on that. I think
22 it's a good, and it's a fair question.

23 I would say there are instances when, yes, they
24 could be included, yes.

25 CHAIRMAN BURTON: Could or should?

26 I think the problem, Mike, is that with
27 everything that's coming down the Commission, with your
28 background, coming from the industry, that there is more whether

1 more pressure or more responsibility on you, almost, to bend
2 over more for the public process, or more than if it was Jeff
3 Brown, or Loretta, or somebody who wasn't. Because you're there
4 as the Public Utility Commission, but you're there as a
5 20-something year background in the Commission, and we all bring
6 our stuff.

7 I think that's the concern that gets relayed to
8 at least this Member by a lot of the consumer groups.

9 You and I go back 35 almost 40 years, so I just
10 think that when stuff happens behind closed doors, and then it
11 looks as though, you know, the consumer's getting short shrift,
12 it just makes more sense to either have them part and parcel of
13 these negotiations or not.

14 Sempra is --

15 MR. PEEVEY: Sempra is the --

16 CHAIRMAN BURTON: San Diego Gas and Electric;
17 right?

18 MR. PEEVEY: It's the parent company of San Diego
19 and of Southern California Gas Company.

20 CHAIRMAN BURTON: So when I'm talking about
21 Sempra, I'm talking about them.

22 Is there an MOU before the Commission that was
23 negotiated with them, or is the Commission in process --

24 MR. PEEVEY: Oh, yes, there is, very much so.

25 CHAIRMAN BURTON: What was the difference between
26 that one and one that the Commission rejected last year?

27 MR. PEEVEY: There's a significant difference,
28 yes.

1 CHAIRMAN BURTON: Okay.

2 MR. PEEVEY: To elaborate, the big -- what
3 happened is, last year the General Counsel of the Commission
4 negotiated a settlement, MOU, if you will, with San Diego Gas
5 and Electric, which was then rejected by the Commission as not
6 being in the ratepayer interest enough.

7 That was renegotiated a second time by the
8 General Counsel on the Legal Division of the PUC. And it is
9 now, in my view, a very reasonable outcome that's, shall we say,
10 significantly sweetened. The pot has been significantly
11 sweetened.

12 If you'll remember AB 265, the legislation that
13 was passed here at the beginning of the energy crisis in 2000,
14 after San Diego rates went through the ceiling, there was -- in
15 effect, the Legislature and the Governor vouched for a very
16 significant run-up in power purchase costs by San Diego Gas and
17 Electric for electricity.

18 The question then becomes, who's going to pay
19 this as time goes on?

20 This settlement will ensure that that money in
21 that account, which is over \$300 million today in that AB 265
22 so-called URSA account, U-R-S-A account, Electric Revenue
23 Account, will be borne, the payment, out of this settlement
24 rather than any rate increase whatsoever on residential and
25 small commercial interests. So, I think it's a very
26 pro-consumer outcome.

27 CHAIRMAN BURTON: UCAN is in court opposing it;
28 right? Or is the Commission opposing it?

1 MR. PEEVEY: I'm not sure if they are right now.
2 I haven't read their filing of two days ago. They had to put in
3 their filing on the 8th, on Monday. I have not read it.

4 CHAIRMAN BURTON: Yeah, they filed. I have no
5 idea of the date, but they filed against it.

6 If this one is better for the consumers than the
7 last one, they probably would have filed. In fact they had a
8 talk about filing two days ago, I guess.

9 MR. PEEVEY: This gets very complicated, but
10 essentially SDG&E sued the Commission, the PUC, in both federal
11 and state courts. And if they were to succeed, and then we
12 could go through many opinions as to the likelihood of success,
13 and what the odds are. You know, finger in the air amongst
14 lawyers as to how good something, the outcome, would be.

15 But if they were to succeed in their lawsuits,
16 they're claiming that the so-called intermediate term contracts
17 are all shareholder assets, meaning they belong to the
18 shareholders, in effect the management of the company rather
19 than ratepayers. If they were to succeed, it could cost
20 someplace between \$350 and \$450 million dollars to San Diego
21 customers.

22 This negotiated settlement wipes out those
23 lawsuits and ensures that there'll be no increase at all in
24 rates for residential customers because of that 325 million. So,
25 I think it's a good deal.

26 CHAIRMAN BURTON: So, UCAN is acting not in the
27 best interests of, or I mean it's --

28 MR. PEEVEY: I think that they're -- I can't

1 speak to what their most recent filing is. It just happened two
2 days ago.

3 CHAIRMAN BURTON: You might get something.

4 As I recall, going back, part of the deal of
5 deregulation was an agreement by the utilities or by somebody
6 that the holding companies would be somewhat -- could be held
7 liable for some actions, or whatever, that they did; that the
8 able to pierce the veil, as they used to say, would be pretty
9 easy.

10 Now, the Commission in January, which I think is
11 before your appointment; right?

12 MR. PEEVEY: Yes.

13 CHAIRMAN BURTON: They reaffirmed jurisdiction
14 over holding companies.

15 Do you agree with that or not?

16 MR. PEEVEY: Well, I don't think the Commission
17 ever lost ultimate jurisdiction over holding companies in some
18 aspects of it.

19 These holding companies were created by the
20 Public Utilities Commission, or allowed to be created by the
21 Public Utilities Commission, going back into the 1980s. And
22 what the intent was, and what the exact implications of all that
23 are in the year 2002, I'm not really clear on, to be very frank
24 about it.

25 CHAIRMAN BURTON: In the decision, they said the
26 first priority condition of a holding company includes the
27 requirement that they infuse capital into their utility
28 subsidiaries when necessary to fulfill the obligation to serve,

1 so that therefore, they couldn't take the money from the
2 utility, put it in their pocket, leave the utility broke so that
3 the ratepayers got screwed.

4 And I guess the basic thing, in January, when the
5 Commission reaffirmed kind of that position, that the holding
6 company couldn't take the money and run, do you agree or
7 disagree with that concept?

8 MR. PEEVEY: I -- I can either agree or disagree
9 right now, because I'm not sure. I have to go back, and my own
10 memory is pretty fuzzy about this.

11 But what capital meant in 1988 --

12 CHAIRMAN BURTON: Mike, it's a really simple
13 thing.

14 It's a simple thing whether or not those holding
15 companies had an obligation, you know, to put money in to keep
16 the utility's ability to serve as opposed to taking money out.

17 MR. PEEVEY: Oh, there's no question that they
18 have that obligation. Yes, I agree with that 100 percent.

19 But it's being -- some would say that it goes
20 beyond that.

21 Yes, the holding companies have an absolute
22 obligation to make sure that PG&E or Edison --

23 CHAIRMAN BURTON: The issue is, can the utilities
24 go after them to get them to take some of the money they ripped
25 off and send it back to the utility? That's basically it.

26 Or do they just, well, you got the money; this is
27 it. The rates went up. We've got these long-term contracts.
28 Everybody's screwed by somebody, and nothing that we can do

1 about it?

2 I mean, I think issue is, can they go after them
3 for unjust enrichment, something?

4 MR. PEEVEY: And that's -- and in the PG&E case,
5 that's being litigated today by the Attorney General, very
6 frankly.

7 CHAIRMAN BURTON: And your point of view is?

8 MR. PEEVEY: I don't have a strong point of view
9 on this, to be frank. I'm going to have to refresh my memory on
10 this whole damn thing.

11 CHAIRMAN BURTON: I don't know anything about it,
12 but I've got a point of view.

13 MR. PEEVEY: Well, I understand. I understand
14 that, but I'm not willing to just jump in and say -- I
15 understand literally what it means.

16 It means that the parent of the utility, the
17 holding company -- let's take PG&E or Edison, doesn't make any
18 difference -- has to make sure the first priority is that that
19 utility has adequate financing to build transmission,
20 distribution, maintain the system, enhance the system, and all
21 that.

22 I agree with you 100 percent about that.

23 You're asking a somewhat different question.
24 You're saying, does it, beyond that point, also have an
25 obligation to do what? And I'm not sure what the what is.

26 CHAIRMAN BURTON: Well, what is obvious, they
27 didn't do that which they were supposed to do, or they wouldn't
28 have been coming to us looking for bailouts.

1 The utilities came to us, and I don't think
2 Senator Johnson was here, but I know Brulte and I were, in
3 December, after it was, like, the lame duck part of President
4 Clinton's thing in a meeting with Secretary Rubin, when
5 everybody was there, the good, the bad, and the indifferent,
6 from Bryce, to Ken Lay to the PG&E guy.

7 In any event, they were coming, asking us for
8 money, asking us for this and that and the other thing.

9 In the meantime, these holding companies were
10 grabbing money. So, they were not living up to that.

11 I don't know if the question I'm asking is, does
12 the utility have a right to go after them and pick their bones
13 bare or not? I probably think they should, but I don't know if
14 they do.

15 Basically, whether or not the Commission's got --
16 in other words, do you believe they've got the right to go after
17 the utilities for what, anything? Nothing? What? The holding
18 companies.

19 MR. PEEVEY: I think that the Commission
20 undoubtedly has the right to ensure that the holding company
21 supports the capital requirements of the utility. And the
22 capital requirements of the utility, my definition has always
23 been to make sure that transmission, distribution, generation,
24 maintenance of the whole system is more than adequately taken
25 care of.

26 CHAIRMAN BURTON: And if they haven't done that,
27 it would seem to me implicit that they would have the right to
28 go after the holding company's funds to ensure that they infuse

1 them back into the utility.

2 MR. PEEVEY: For those purposes I just stated,
3 yes, that's true.

4 CHAIRMAN BURTON: For those purposes.

5 Senator Johnson.

6 SENATOR JOHNSON: I just want to echo the
7 implicit comments of the Chairman.

8 I think it is absolutely wrong that these holding
9 companies, and I think that's splitting hairs, frankly, to say,
10 well, no, when we meant capital, we didn't mean capital; we
11 meant this and this, these specific things. I mean, it could
12 have been spelled out at the time if that's what it meant.

13 I think the common sense meaning is, they were
14 responsible for seeing that these subsidiaries remained solvent
15 in all respects. And to have billions of dollars transferred
16 and spent all over the world while the taxpayers and the
17 ratepayers of California get stuck is, I think, unfair.

18 MR. PEEVEY: I understand. I understand exactly
19 what you're saying.

20 I think one has to go back, as I said earlier,
21 these holding company decisions were mostly rendered in the
22 1980s, and read chapter and verse of the context in which those
23 decisions were made. I just have not done that.

24 SENATOR JOHNSON: I agree, and I've read some of
25 that language, although it's been some months ago now. But it
26 seemed to me pretty clear that it wasn't some laundry list that
27 applies to this and this, you know. It was capital.

28 And I think common sense would dictate a common

1 sense rather than an over-lawyer analysis of what was meant
2 there. I mean, common sense says that the folks responsible
3 took billions of dollars during a period of time when they were
4 making a bunch of money through these subsidiaries and invested
5 it everywhere else in the world. Then, when the prices go up,
6 you know, well, gee, I'm sorry, we've spent that money somewhere
7 else.

8 MR. PEEVEY: The context, to the best of my
9 recollection of when the holding companies were created, was
10 that the Commission acted to protect the ratepayers of the
11 utilities from money being taken up to the holding company and
12 being invested in insurance companies, golf courses, and all
13 that kind of thing. And that was the focus at the time, to the
14 best of my recollection.

15 Like I said, this is the late '80s and --

16 SENATOR JOHNSON: Common sense would dictate a
17 different interpretation in my mind. And if that's what was
18 meant, why wasn't it spelled out at the time, that this is what
19 we're talking about, and opposed to capital in the ordinary
20 sense that we think of that?

21 Then, to just bring it back to the earlier
22 discussion about exit fees, and direct access, and so on, I have
23 to tell you that I think in any moral sense, these holding
24 companies, these parents of the utilities sure ought to be at
25 risk not only before, you know, homeowners, but also major
26 customers who have purchased their electricity through direct
27 access.

28 I mean, the people who made billions of dollars

1 off of this ought to be, I think, more responsible.

2 Anyway, I appreciate your listening.

3 MR. PEEVEY: Well, the Commission settlement,
4 just to amplify slightly, the Commission settlement with Edison,
5 which is -- I mean, PG&E's in bankruptcy. San Diego never got
6 to that point and maintained its credit rating. Edison was on
7 the verge on this.

8 The Commission settlement last fall with Edison
9 did take \$300 million from the holding company, number one.

10 Number two, it did say that there could be no
11 dividend payments from the holding company to shareholders until
12 all this past-due money was paid off. So, I mean, there were
13 economic consequences of that, that came out of the hide of the
14 holding company.

15 I'm not saying that was adequate or sufficient.
16 I'm just saying that it did happen.

17 SENATOR JOHNSON: But there're going to be
18 economic consequences for taxpayers and ratepayers of all kinds
19 and descriptions.

20 MR. PEEVEY: Yes, there is, for some time to
21 come. That's absolutely true. I agree with that. And it's our
22 just to try to ensure that those are de minimus.

23 CHAIRMAN BURTON: Senator Karnette.

24 SENATOR KARNETTE: Well, I've listened to all
25 this, and I've heard it before, but it seems like you mentioned
26 to me a while ago that the city has to take a risk. That's a
27 risk. They just lose their money if they made a plan and they
28 invested.

1 Well, it seems to me like the holding companies,
2 this is a risk, and their risk was, they might have to pay this
3 back, and they didn't do it.

4 Now, maybe I'm oversimplifying things. But they,
5 too, took a risk. When you make an investment, you take a risk.

6 But they don't want to pay the consequences, and
7 I think they should. If this poor city has to pay the
8 consequences, then I think those holding companies.

9 Maybe some of mine, maybe I have investments. I
10 don't know. I mean, I don't know where my retirement, I don't
11 know where they're all invested, but I'm willing to do that.

12 I just think it's a matter of moral integrity
13 that they should -- okay, so they can find the money someplace.
14 They can borrow it from some other company. That's the way you
15 do things, and they could have done it. They didn't want to do
16 it. They just didn't want to. And I think they should, and I
17 think the ratepayers shouldn't have to pay the consequences.

18 MR. PEEVEY: Okay.

19 CHAIRMAN BURTON: Senator Romero.

20 SENATOR ROMERO: No questions on this.

21 CHAIRMAN BURTON: Just a couple more things.

22 You briefly mentioned you did look at, although
23 it's in the process, I think, of being amended, Chairman
24 Wright's 2958.

25 MR. PEEVEY: The NERF bill.

26 CHAIRMAN BURTON: Right.

27 One, you stated, which I believe, it's intrusive.
28 In other words, it takes the utility out of the ability to do

1 some regulation, or try to recapture some money, or deal with
2 rates, assuming you find out that the utility, which in this
3 instance we're talking phones, either made too much money,
4 charged too much money, or cooked the books.

5 MR. PEEVEY: It's prescriptive legislation. You
6 know, I'm a little chary about saying this, but by the
7 Legislature, the legislation would sunset, but for a period of
8 time, it significantly restricts the Commission's ability to
9 carry out its duties, in my view, regarding telecom, and I don't
10 think that's wise.

11 I wrote you that today I would oppose that
12 legislation. When it first came before me, I'd only been on the
13 Commission two weeks. I didn't know anything about it, to be
14 very frank.

15 But I think it's an unwise piece of legislation,
16 and I would advise the Governor's Office accordingly, if it gets
17 there.

18 CHAIRMAN BURTON: Well, Senator Bowan's committee
19 has been -- I don't know whether we're working with Chairman
20 Wright or with SPC, or whatever. But we're trying to work on
21 some amendments to the bill that deal with what may well be a
22 legitimate point of view that they have, and see whether or not
23 something could be worked.

24 But I think just the way it is, it sort of locks
25 something in that I don't know if it's good, bad, or
26 indifferent.

27 I've talked to the president of the company about
28 a month ago, and then as late as yesterday, and gave them my

1 feelings. So, hopefully something will work.

2 The bill in its present form had very little
3 support in the policy committee.

4 MR. PEEVEY: You should know, I yesterday
5 indicated my feelings to Mr. Daily about that.

6 CHAIRMAN BURTON: I appreciate that.

7 MR. PEEVEY: But just yesterday he was in town.

8 CHAIRMAN BURTON: What was the rush on that 20-20
9 program this year as it came out of the Governor's Office? I
10 mean, he seemed to be in a big hurry to do it. Although, I
11 think you were in the meeting when Senator Bowan, and we met in
12 my conference room, and really, it was starting before it got
13 hot, instead of like having some more public input.

14 Did the pressure for getting it done quick come
15 out of the Governor's Office?

16 MR. PEEVEY: Well, more important than the
17 Governor's Office was just the time of year. I mean, here we
18 are in early July, and frankly, I'm glad we have this program in
19 place because today's setting all kinds of heat records all over
20 the state, and I'm glad we have some -- an element of a
21 conservation program that's an incentivized program for
22 residential users here that's in place.

23 And it runs through the end of October this year.
24 Last year it ran June through September.

25 CHAIRMAN BURTON: Senator Johnson, Senator
26 Karnette, anything further? Senator Romero.

27 SENATOR ROMERO: I have some general questions
28 about due process.

1 CHAIRMAN BURTON: Go for it.

2 SENATOR ROMERO: Before I was elected to the
3 Senate, I represented the 49th Assembly District, and it's
4 somewhat unusual for me to get a communication regarding
5 opposition to a particular appointee. In this case, I did
6 receive a very strongly worded resolution that was adopted by
7 the 49th Democratic Assembly District in opposition to your
8 appointment.

9 I don't know if you're familiar with that and
10 have read the contents of that.

11 MR. PEEVEY: No, I have not.

12 SENATOR ROMERO: I'll share it with you.

13 Two days ago, the Committee did receive a letter
14 from the Utility Consumers Action Network. I don't know if
15 you've seen this letter as well.

16 MR. PEEVEY: I have not.

17 SENATOR ROMERO: There are four major issues that
18 are raised with respect to their concern. I think they're
19 serious issues, and of course, I'm sure that we can make sure
20 that you get a copy of this.

21 But the ones that concern me the most are
22 questions of due process. Can you describe for the Committee
23 how decisions are made by the PUC?

24 You are under the auspices of the Brown Act; is
25 that correct?

26 MR. PEEVEY: The Bagley-Keene Act, yes.

27 SENATOR ROMERO: Bagley-Keene.

28 MR. PEEVEY: Yes.

1 SENATOR ROMERO: There is an argument in this
2 particular letter that was received by the Committee with
3 respect to the San Diego Gas and Electric with respect to the
4 appealing of the Commission decision relating to the \$348
5 million in profits reaped by the utility during the energy
6 crisis.

7 Apparently, according to this letter, and I would
8 just like confirmation, if you can indicate, and these are
9 allegations, if you could confirm for me whether or not these
10 are accurate or inaccurate, because they do concern me to see
11 them worded.

12 Do you meet from time to time with
13 representatives from utility companies?

14 MR. PEEVEY: Yes.

15 SENATOR ROMERO: Do you meet with consumer
16 groups?

17 MR. PEEVEY: Yes, my door is open to anyone.

18 SENATOR ROMERO: Your door is open to anyone.

19 MR. PEEVEY: To anyone.

20 SENATOR ROMERO: So, if UCAN wanted to set up an
21 appointment with you to discuss a particular policy that might
22 come up at an upcoming board meeting, you would be willing to
23 meet with them?

24 MR. PEEVEY: Of course.

25 SENATOR ROMERO: And that has occurred?

26 MR. PEEVEY: They have never come to see me.

27 SENATOR ROMERO: Have they ever submitted
28 telephone requests or letters?

1 MR. PEEVEY: No, nothing.

2 SENATOR ROMERO: So, there's never been a request
3 by at least this particular action network.

4 What about by other consumer groups?

5 MR. PEEVEY: They have been in to see me
6 repeatedly, whether it's TURN, NRDC, Environmental Defense, you
7 name them. They've been there.

8 In fact, I just voted last week for an intervenor
9 funding request of TURN.

10 So, this is a -- this is shocking, this letter.
11 I've just glanced at it.

12 SENATOR ROMERO: I thought you hadn't read it.

13 MR. PEEVEY: I just read the -- I just glanced at
14 it. I'm a quick reader.

15 SENATOR ROMERO: It's shocking to me as well.
16 That's why I'm glad that you do have a copy of the letter.

17 MR. PEEVEY: It was just put here on the table.

18 SENATOR ROMERO: If you would kindly turn to Page
19 Two. This is the part that particularly concerns me with
20 respect to due process. Perhaps you could just take a moment to
21 read three short paragraphs.

22 There are some issues that are raised that I,
23 quite frankly, in all fairness to both you and to the network,
24 if you could address the allegations that are raised in this
25 particular letter.

26 MR. PEEVEY: These are -- there's not much I can
27 say to this. I mean, this is frankly a smear, to be blunt about
28 it.

1 And I just quickly read this due process thing
2 here.

3 This group last never reached out to talk to me.
4 They have never said a word to me. Now, it's Mr. Shames who is
5 the head of this organization has -- well, they've never made an
6 effort to ever communicate anything with me whatsoever, unlike
7 every other consumer group in the state that I know of.

8 So, the kind of thing they say there, disregard
9 for due process, and selling out San Diego customers, I mean,
10 these are, you know, flame laden phraseology and words that I
11 resent.

12 SENATOR ROMERO: If you might just address
13 really, more so, the question is about the decision making
14 process arrived at.

15 I understand, too. I will have meetings with
16 consumer groups. I will have meetings with utility
17 representatives as well.

18 I think the concern raised here and that I would
19 like to have just some specific answers to is, whether or not
20 you do feel that there is, perhaps, the perception, if that
21 alone, the perception that perhaps there are closed door
22 meetings with utility executives, representatives, which later
23 translate into public policy at Commission meetings without
24 notice, without input, from consumer groups, whether or not they
25 have requested to meet with you.

26 Is there at all a concern that there may be a
27 perception that that may be the case?

28 MR. PEEVEY: Well, apparently in this

1 organization's mind there is that perception. I mean, that's
2 what they say.

3 What can I say other than that?

4 No, I mean, they have the right to come talk.
5 They can have lunch. They could meet in the office, anything
6 they choose.

7 If they choose not to meet with me, and then make
8 these kind of assertions,

9 "We have been informed that
10 Mr. Peevey has steadfastly
11 refused to respond to press
12 calls on this matter."

13 Absolutely untrue. I would talk to anybody from the press.

14 I mean, I don't know where this comes from. This
15 is second and third-hand things that are scurrilous, to be very
16 frank.

17 SENATOR ROMERO: And the bottom line is, you have
18 an open door policy.

19 MR. PEEVEY: I absolutely.

20 SENATOR ROMERO: And you meet with all groups.

21 MR. PEEVEY: Absolutely. And I would say to this
22 Committee, and if there's anybody representing UCAN behind me,
23 that it's up to you to come and see me. My door is open to you.

24 I don't know what more I could possibly say to
25 that, you know. They make no effort whatsoever to say -- have
26 any communication with me, and then send you a letter, no copy
27 to me to the best of my knowledge, and the letter appears here
28 on this table five minutes ago, and that's it. I mean, that is

1 not a way to conduct the affairs of state.

2 SENATOR ROMERO: The other issue as well, too,
3 with respect to due process that I would ask about is that there
4 was quite a bit of consumer outcry regarding the deals that were
5 made with respect to bankruptcy with respect to Edison, and of
6 course PG&E. I for one did not vote for the Edison bailout.

7 There was concern and a bit of a public outcry, I
8 believe, about the nature over this.

9 Of course, you're not on the Commission. This is
10 not your responsibility.

11 However, if these deals happen to be overturned
12 by the courts, what would be your belief with respect to having
13 discussions about the next step, what to do, in public?

14 MR. PEEVEY: I would have no problem with that at
15 all. We'll have to await events to see whether that happens or
16 not.

17 One of these consumer groups, TURN, is one of
18 those that has appealed this in federal court today, as a matter
19 of fact. They may succeed; they may not.

20 If they do, we will be presented with a very,
21 very significant challenge as a Commission, because of the \$3.6
22 billion so-called under collections to the Edison Company, 1.9
23 billion they've already recouped. So, you're in a situation.
24 It's never -- it's a little bit like putting Humpty Dumpty back
25 together, in some respects.

26 SENATOR ROMERO: This would be considered to be
27 litigation. Would this be an issue in which you would think
28 that this would be an appropriate use of a closed door session?

1 MR. PEEVEY: Well, there would be that, but it
2 would also certainly have -- there would have to be some very
3 open discussion. This would be a very significant alteration of
4 things.

5 SENATOR ROMERO: And a commitment that there
6 would be public discussion, with the ability of the public to
7 participate?

8 MR. PEEVEY: Yes, absolutely.

9 SENATOR ROMERO: Thank you.

10 CHAIRMAN BURTON: Witnesses in support, please.
11 Mr. Dereg himself.

12 MR. SMITH: Mr. Chairman and Members --

13 MR. PEEVEY: I might add, this was not at my
14 request.

15 [Laughter.]

16 CHAIRMAN BURTON: Wait till you see the next one.

17 MR. SMITH: Mr. Chairman, Members, I'm D.J.
18 Smith, acting personally, but also on behalf of PacifiCorp and
19 the California Large Energy Consumers Association.

20 We're in strong support of this nomination. We
21 believe that this particular member of the Commission brings a
22 balance and a sense of the business, both publicly and
23 privately, that has been lacking. And frankly, we really
24 believe will bring back to prominence the role of -- the
25 historical role of this Commission.

26 CHAIRMAN BURTON: Which you considered what?

27 MR. SMITH: Respect for the regulatory pack,
28 utilities that had an obligation to serve are allowed to recoup

1 their costs in an adequate rate of return, for starters, so that
2 we didn't have insolvent utilities in the state. The state had
3 to come back and take over the process.

4 A balance between all consumers and the interests
5 of the utilities, not just residential consumers, small
6 consumers, but also large consumers that contribute to the
7 economy of the State of California.

8 I think this is one nominee that has a sense not
9 only the history, but where we need to go from here. We've got
10 a lot of broken eggs here to put back together. This obviously
11 did not work out the way anybody had intended, and we're going
12 to go through a very difficult transition period. This
13 transition period is controversial, complex, and very difficult,
14 and will require a lot of tough decisions.

15 My clients face hundreds of millions of dollars
16 in costs that'll be allocated by this Commission --

17 CHAIRMAN BURTON: As a result of what?

18 MR. SMITH: As a result of --

19 CHAIRMAN BURTON: Them wanting to have direct
20 access?

21 MR. SMITH: Wanting to bring down electrical
22 costs.

23 CHAIRMAN BURTON: And them wanting to have direct
24 access?

25 MR. SMITH: Yes, some competition in the
26 marketplace.

27 CHAIRMAN BURTON: Was that forced on them, or was
28 that a request by them? I can't remember, the business

1 community.

2 MR. SMITH: Actually, it was the initial foray
3 into deregulation was the product of a Commission proceeding to
4 look at this whole issue.

5 CHAIRMAN BURTON: But I mean, when a business
6 community gets --

7 MR. SMITH: Which was supported.

8 CHAIRMAN BURTON: -- gets direct access, is that
9 something the Commission makes them do, or that something that
10 they have free will to do?

11 MR. SMITH: Right now they have a choice. They
12 had a choice for a limited period of time.

13 But their rates were increased between 70 and 140
14 percent over a very short period of time. A lot them jumped
15 during this window last year into direct access contracts, where
16 they took the risk for the energy portion of their bills.

17 And that -- right now, a significant portion of
18 the major agricultural, commercial, and industrial employees of
19 this state -- employers of the state are now on direct access
20 contracts of one sort or another.

21 CHAIRMAN BURTON: How much do you think they
22 ought to bear in exit fees and costs that they kind of escaped
23 by jumping, when the homeowner down the street, or the
24 farmworker working for that big farm --

25 MR. SMITH: My client, CLECA, has come forth with
26 testimony at the Commission where we don't wish to escape. We
27 are arguing, Mr. Chairman, about each element. You know, what
28 should be in, what should not be in.

1 And frankly, we side with a lot of the other
2 small consumer groups on some of those arguments.

3 But we have not endeavored to escape any of these
4 major fees.

5 We have suggested to the Commission that the
6 so-called mortgage that's due here from direct access customers
7 be arranged so that we don't have such an economic cost shock
8 that many of our folks can't do business in the state any
9 longer, particularly --

10 CHAIRMAN BURTON: Pick up your farms and move to
11 Arizona?

12 MR. SMITH: No, they're going to shut down plants
13 and facilities, or move production outside of the state.

14 We believe that what we're trying to work out
15 with the Commission is a long-term payment plan, if you will, so
16 that the shock, the rate shock, is not so severe that it really
17 impacts people's ability to do business here.

18 CHAIRMAN BURTON: Thank you.

19 MS. ROTHROCK: Thank you, Committee. My name is
20 Dorothy Rothrock. I'm with the California Manufacturers and
21 Technology Association.

22 I also was not solicited to appear here today by
23 the nominee, but I'm in strong support.

24 The Association believes that the PUC will be
25 well served with Mr. Peevey's experience and background in the
26 industry, and that's what we need to lead us forward into the
27 next few years as we find our way out of the crisis.

28 Any questions?

1 CHAIRMAN BURTON: Any other witnesses in support?
2 Other witnesses, Mike Florio.

3 MR. FLORIO: Thank you Mr. Chairman, Members of
4 the Committee. My name is Mike Florio. I'm senior attorney for
5 TURN, The Utility Reform Network.

6 CHAIRMAN BURTON: And a valued member of the ISO.

7 MR. FLORIO: For better or worse, yes. I imagine
8 I'll be sitting up here one of these days myself.

9 TURN, as matter of policy, generally does not
10 take positions pro or con on nominees to the Public Utilities
11 Commission. We work on a day-to-day basis with Commissioners of
12 both parties for 25-plus years now. And, you know, we agree
13 sometimes; we disagree sometimes. And we try to get along.

14 So, I'm not here to say you should confirm, you
15 shouldn't confirm. That's your business, not ours.

16 I was asked to share some of the our reflections
17 about Commissioner Peevey, and that's what I'm here for today.

18 I think, as you've seen already, Commissioner
19 Peevey is an extraordinarily capable person. He has a long
20 history in the industry. He's quite a bit more knowledgeable
21 than many of the people who have served on the Commission in the
22 past. And that's all to the good.

23 I think we, as advocates for residential and
24 small business customers, have some concerns. I wouldn't say
25 that Commissioner Peevey is hostile to our interests. I think
26 he does care about small customers, but you have to look at what
27 goes on at the PUC.

28 There are basically four sets of interests that

1 contend over the years in various sorts of proceedings. There
2 are the utilities; there are actual and potential competitors of
3 the utilities; there are large customers like the two that you
4 just heard from; and there are small customers, such as TURN and
5 UCAN and others represent.

6 And I think our concern is not that small
7 customers don't show up on the priority list. I think the
8 concern is, those other interests tend to take precedence for
9 Commissioner Peevey. And, you know, that's -- that's a matter
10 of personal philosophy that's not for us to judge, but it
11 certainly is a concern for us.

12 And I think this direct access issue that you've
13 talked about is a good example of it. We are just today filing
14 comments on the alternate that was sponsored by Commissioner
15 Peevey and Commissioner Brown that you asked some questions
16 about earlier. We are extremely troubled by that decision. We
17 believe that it seriously --

18 CHAIRMAN BURTON: Excuse me.

19 Senator Johnson.

20 SENATOR JOHNSON: Could I get you to address the
21 same question that I asked of Mr. Peevey, do you believe there's
22 any impediment, if there is in fact a difference, to having
23 Edison, for example, eat that instead of either direct access
24 customers or the public customers?

25 MR. FLORIO: We are in Federal Appellate Court
26 right now trying to make sure that Edison bears some of that
27 responsibility. We think that the holding company did have an
28 obligation to step in and turn back some of the money that they

1 made from the good years and help the utility out in lean times,
2 which they did not do.

3 SENATOR JOHNSON: So, it's your position that
4 it's not necessarily one or the other, either the direct access
5 folks take a major hit, or bundled ratepayers take a major hit.
6 That there is a third alternative?

7 MR. FLORIO: Yes. Unfortunately in the
8 circumstances we're in now, where the Commission has already cut
9 a deal in Federal Court before Commissioner Peevey was
10 appointed.

11 In the case that's in front of the Commission
12 right now, there are only the two options, is it bundled
13 customers or is it direct access. If we're successful in our
14 challenge to the settlement, that other option may be opened up
15 again. But for the moment, we've got a fixed pie that we're
16 slicing up.

17 SENATOR JOHNSON: It doesn't seem like it's a
18 very good choice --

19 MR. FLORIO: Oh, it's a horrible choice.

20 SENATOR JOHNSON: -- between two sets of people
21 who are not responsible for the situation we're in.

22 MR. FLORIO: Absolutely. And the ratepayers are
23 the real victims of this situation that's happened.

24 And we were extremely distressed when the
25 Commission settled with Edison on terms that were far more
26 generous than the terms that barely passed out of this house
27 last summer, the bill that passed the Senate. I believe it was
28 Senator Polanco's bill, would have given Edison two-and-a-half

1 billion dollars, and that would all have been paid by the large
2 customers.

3 SENATOR JOHNSON: In fairness, Mr. Peevey wasn't
4 there.

5 MR. FLORIO: Correct.

6 SENATOR JOHNSON: I have very similar problems
7 with what was done, and at a point in time when clearly the
8 Legislature, in my opinion, was not going to take the action.
9 Suddenly, the PUC steps in at the Nth hour.

10 But I'm still hung up on this question of, does
11 that settlement absolutely preclude Edison bearing a greater
12 share of the responsibility?

13 MR. FLORIO: As I read it, it does, unless we're
14 successful in overturning it.

15 SENATOR JOHNSON: Thank you.

16 CHAIRMAN BURTON: There's a difference in dollars
17 of, I think, 154-something to 155-something; right?

18 MR. FLORIO: Yes.

19 CHAIRMAN BURTON: If it's four something, which
20 Commissioner Peevey, based on the evidence believes it will be,
21 something's going to happen. If the 450 becomes, for whatever
22 reason, wrong, and it goes up to that five number, then the
23 bundled customer will get stuck with it.

24 MR. FLORIO: That's correct.

25 CHAIRMAN BURTON: What if, at the get-go, and I
26 forgot to ask Commissioner Peevey this, what happens at the
27 get-go if they pick the 590 number?

28 MR. FLORIO: Well, we think that a number in the

1 500 million range is the correct one.

2 CHAIRMAN BURTON: In other words, they get stuck
3 equally, direct access and the bundled, or Edison gets stuck, or
4 who gets stuck?

5 MR. FLORIO: We think that the 540 million
6 number, or something in that range, would spread it equally over
7 everyone.

8 CHAIRMAN BURTON: But it'd be spread equally over
9 all the ratepayers, direct and nondirect?

10 MR. FLORIO: Right, right.

11 CHAIRMAN BURTON: But if you go in at the lower
12 number and you're wrong, it all goes to the smaller ratepayers?

13 MR. FLORIO: If the 390 million number is
14 adopted, that extra 150 million would be picked up by the
15 bundled customers.

16 CHAIRMAN BURTON: Okay. I think, as I recall, in
17 answer to a question, the Commissioner said that if they pick --
18 and I don't want you to go back and try to read through it --
19 but if they say whatever the 390 is, but in the event that it's
20 more, then it would be spread equally.

21 Wasn't that the answer?

22 MR. PEEVEY: Yes.

23 MR. FLORIO: I'm not sure how that would come
24 about procedurally. The Commission could reopen the record to
25 take more evidence. I think, you know, there has been an
26 acknowledgement by the parties that there are unknown numbers
27 that are not on the record of that proceeding. We think that
28 the 390 --

1 CHAIRMAN BURTON: Could the Commission not say
2 the number's 390, and in the event it goes above that, that that
3 number will be spread equally among the ratepayers?

4 MR. PEEVEY: Yes.

5 CHAIRMAN BURTON: It seems like something
6 logical. Of course, that doesn't necessarily mean it can be
7 done.

8 MR. FLORIO: Well, I think that's what the Edison
9 proposal that, oddly enough, TURN supports, would do. It would
10 set a fee of about two-and-a-half cents a kilowatt hour, and
11 however much direct access there was, that's the amount of money
12 it would bring in. It might be 390; it might be 540.

13 But as I understand the alternate, it would say
14 the number's 390 and not a nickle more.

15 CHAIRMAN BURTON: As long as we're just kind of
16 discussing something, they're coming in with, there's a bill and
17 there's an amendment; right? I mean, somebody can't amend the
18 amendment? In other words, somebody can't change the alternate?
19 It's either one or the other?

20 MR. FLORIO: We're -- we are filing comments
21 today at the PUC on that.

22 CHAIRMAN BURTON: Forget the comments. What's the
23 process?

24 Or I should ask the Commissioner.

25 MR. PEEVEY: I indicated to you earlier that I'm
26 open to doing that, and finding a mechanism to do that.

27 So, if the number turned out to be 540, rather
28 than 390, you could do it.

1 CHAIRMAN BURTON: In the procedure you can amend
2 it.

3 MR. PEEVEY: Yes.

4 CHAIRMAN BURTON: I just wondered.

5 MR. PEEVEY: And I would just point out -- and
6 Mike, you should know that -- that I would be happy to support
7 540 if the record shows that. But the best that Planning and
8 the Energy Division came up with was 391. That's it.

9 CHAIRMAN BURTON: You understand that. We're all
10 in agreement that if somehow God came down and made a mistake,
11 that they're going on to adopt it, clearly.

12 MR. FLORIO: We are hopeful that our comments
13 will convince Commissioner Peevey and Commissioner Brown that it
14 should be the higher number.

15 CHAIRMAN BURTON: I think the important thing is
16 that there is language. I don't know if you can do it, and
17 that's why I'm trying to find out, and it's kind of simple.

18 If the order says, and if the number is higher --

19 MR. FLORIO: Yeah. The trouble is, I think the
20 Commission decides what the number is.

21 CHAIRMAN BURTON: Well, if they decide what the
22 number, in other words, the Commission cannot say the number is
23 four, but in the event it's five, we go rob a bank?

24 MR. PEEVEY: You could make a -- I mean, the
25 answer to your question is a simple one. Yes, we can do that,
26 and yes, it can be made subject to further revision or
27 refinement by the Energy Division.

28 And I said that we will put in language like

1 that.

2 CHAIRMAN BURTON: So, I understand the process.

3 Now, the one thing I'm trying to understand is
4 that you can do that prior to adoption. In other words, if you
5 adopt it, then you got to go back in. Isn't it easier to try to
6 do it right from the get-go?

7 MR. PEEVEY: One would think so, and when I leave
8 here, I'll get on the phone.

9 CHAIRMAN BURTON: Okay, fine. You've committed
10 to that.

11 MR. FLORIO: And we've talked about this in the
12 past, before the alternate came out. We'll continue to talk
13 about it and try to work it out.

14 MR. PEEVEY: I'm happy to sit down and talk with
15 you on this.

16 MR. FLORIO: Sure, and we have on many
17 things.

18 CHAIRMAN BURTON: Why don't you do it without
19 taking up a lot more time.

20 [Laughter.]

21 MR. FLORIO: Okay.

22 There's one other thing that I want to mention on
23 this direct access issue. There's this issue of spreading out
24 what the direct access customers have to pay over a longer
25 period of time. Mr. Smith mentioned that. The alternate talks
26 about doing that.

27 We do not care. We would support spreading out
28 the liability if bundled customers don't have to carry the

1 freight in the meantime. That's where this concept of a forced
2 loan from the small customers comes in.

3 If you're going to give them longer, the big
4 customers a longer time to pay, who is fronting that money in
5 the meantime, and what interest rate are they getting on it?
6 And as we read the alternate, we're fronting the money, and
7 we're not getting any interest. That's troubling to us.

8 CHAIRMAN BURTON: Could you comment on that? And
9 address this, too, Mike, and maybe it doesn't matter, but let's
10 say you've got Campbell Soup, or whoever it is, and they're
11 spreading it out over 20 years. In 10 years Campbell dies, and
12 his kids don't want to be in the soup business. What happens to
13 that? Do they have mortgage -- what's that stuff when you buy
14 a house and you die, the worst insurance you could get --
15 mortgage life insurance.

16 What would happen in that event?

17 And also, if the unbundled customers are
18 basically fronting the money to allow the big users to spread
19 out the payment, which is not necessarily an unfair thing, but
20 that should probably also be on the showing that they really
21 have to spread it out. Who fronts it, and how do they get the
22 money back, and is it fair for somebody's grandmother to pick up
23 the stiff?

24 MR. PEEVEY: On that point, I mean, let's just
25 take this historic procurement cost of Edison's. It's 391
26 million. That's not the actual number. It's higher than that,
27 because there's interest in there, too.

28 So, it's 391, but it's spread out over a couple

1 of years. So, it'll be 391, but you'll be paying a fraction.
2 You'll be paying interest on it, so that in truth, it's not a
3 free ride, but in fact, the direct access customers will pay 391
4 plus the 5.9 percent interest charge on that money for the
5 period of time until the 391 is paid off. So, it'll add up to
6 more like 420 or 430 than the 391.

7 CHAIRMAN BURTON: You know, you were so smart,
8 you cannot answer my questions.

9 MR. PEEVEY: I answered one of your questions. I
10 didn't answer the second one.

11 CHAIRMAN BURTON: I didn't even know I asked that
12 one.

13 [Laughter.]

14 MR. PEEVEY: I don't know about Mr. Campbell.

15 CHAIRMAN BURTON: No, the point is, the direct
16 access, D.J.'s people, on exit fees. They don't want to have to
17 come up with, you know, a million dollars today. They want to
18 spread out the payment. Makes sense.

19 But if they're spreading it out, is there a
20 shortfall that's got to be met by somebody, and that somebody
21 would then have to be the bundled customer, then what are they
22 getting in return for that? Or in fact, they're subsidizing the
23 fact that his guys are getting along?

24 MR. PEEVEY: The way I see this working, very
25 frankly, I tried to use by way of analogy this historic
26 procurement cost to Edison, but the same thing would apply.

27 To the extent that the direct access customers'
28 money is the spread out over time, there will be an interest

1 component, and they will pay that interest component. So,
2 instead it going, say, eight years, it'll go ten years, because
3 there'll be interest. So, they don't get off the hook.

4 CHAIRMAN BURTON: But somebody at some point --

5 MR. PEEVEY: And the bundled customers will not
6 pay it.

7 CHAIRMAN BURTON: They don't have to front the
8 money --

9 MR. PEEVEY: No, they don't front it.

10 CHAIRMAN BURTON: -- with a shortfall of --
11 No, it's in the interest charge. It'll be in the
12 interest charge.

13 CHAIRMAN BURTON: You ought to get those orders,
14 Mike.

15 MR. FLORIO: I didn't see interest in there, but
16 if it's supposed to be there, that's great.

17 CHAIRMAN BURTON: Just another thing, and I know
18 even know if it would be an issue or not, but say you have
19 whatever it is, an asphalt business, or who knows what, asphalt,
20 or maybe even a technology business.

21 If you have a company that's spreading their
22 money over, say, a 10 or 15-year period, whatever it is, and for
23 whatever reason that company, nobody's using asphalt any more.
24 They're using aggregate, and they're out of business.

25 How do you pick up the money they owe you when
26 they're no longer there buying electricity?

27 MR. PEEVEY: Well, as a practical matter, I think
28 the remaining nonbundled customers, direct access, customers

1 will pick up the rate.

2 CHAIRMAN BURTON: In other words, that --

3 MR. PEEVEY: It's a situation, someone leaves the
4 state.

5 CHAIRMAN BURTON: You know, it's just kind of an
6 idle curiosity question.

7 MR. PEEVEY: But it's like someone leaves the
8 state, they go to Nevada. Put their warehouse in Nevada. They
9 were a direct access customer.

10 The CDWR charge and everything else are going to
11 remain there, so someone else -- the balance, the group's going
12 to pick it up.

13 CHAIRMAN BURTON: Thank you.

14 Thank you, Mike.

15 MR. FLORIO: I think that's -- I just wanted to
16 make a suggestion that may come back before some of you, is
17 there's potentially, when you get into the DWR, a large chunk of
18 money here that's going to be on this loan for 15 or 20 years.

19 And one of the options that we'd like to put on
20 the table is, DWR is going to go out and float a big bond, maybe
21 we should add a little more on to that bond to front the money
22 for the bundled customers, and then we're out of it, and we're
23 happy to support, you know, DWR borrowing the money and
24 collecting it over time, with interest, from the direct access
25 customers.

26 CHAIRMAN BURTON: Whatever happened to those bond?

27 MR. PEEVEY: They're already over \$11 billion,
28 the biggest issuance ever in the history of the country.

1 MR. FLORIO: Yeah, but that's another option.

2 CHAIRMAN BURTON: It's money well invested as
3 opposed to spent.

4 MR. FLORIO: That's basically what I had to offer
5 for the Committee's consideration.

6 Thank you.

7 CHAIRMAN BURTON: Thank you.

8 Doug Heller.

9 MR. HELLER: Good afternoon, Mr. Chairman,
10 Members of the Committee. I'm Douglas Heller. I'm the Senior
11 Consumer Advocate with the Foundation for Taxpayer and Consumer
12 Rights, a nonprofit and nonpartisan organization.

13 In addition to our consumer protection work, our
14 organization works to protect taxpayer dollars, particularly
15 with an emphasis on conflicts of interest in government.

16 We appreciate the opportunity as well,
17 Mr. Chairman, to provide testimony on what we see as a very
18 important issue of whether or not Mr. Michael Peevey is
19 qualified to take on a Commissioner's responsibility, and that,
20 of course, defending utility ratepayers.

21 In our mind, the fundamental role of the
22 Commissioner is to protect consumers. And unlike others have
23 suggested, the Commission is not constitutionally set to balance
24 the interests of corporations against the interests of
25 consumers.

26 The duty of the Commission is much clearer: to
27 regulate the various utilities in order to ensure reliable and
28 reasonably priced services to ratepayers.

1 We believe that in judging whether or not
2 somebody is qualified to sit on the Commission, one should look
3 not only at what they say they will do, but also what they have
4 done.

5 And based upon our analysis of Mr. Peevey's
6 professional career, his public statements about regulation in
7 the past, and as well as his term thus far as an unconfirmed
8 appointee to the Commission, we do not believe that Mr. Peevey
9 meets those qualifications that the public interest sets.

10 As one might look at other departments in the
11 state, one certainly would not want the head of State Farm to
12 run the Department of Insurance, a timber industry executive to
13 oversee forestry management, or the head of Kaiser --

14 CHAIRMAN BURTON: God forbid that.

15 MR. HELLER: Or the head, for example, of Kaiser
16 to run the Department of Managed Care.

17 And just as, I think, this Committee and the
18 State Legislature would be outraged if the President were to
19 name an executive from Reliant Energy or Enron to fill a seat on
20 the Federal Energy Regulatory Commission, we believe it is
21 equally unacceptable to place Mr. Peevey on the California
22 Public Utilities Commission.

23 For most of the past 18 years, Mr. Peevey's
24 professional career has been dedicated to corporations that are
25 either overseen by the PUC or have in various ways worked around
26 and tried to get around its authority. Between 1984 and 1993,
27 Mr. Peevey worked for the Public Utilities Commission regulated
28 Southern California Edison Company. He became the President of

1 that company in 1990, and after retiring in 1993 --

2 SENATOR JOHNSON: Question, Mr. Chairman.

3 Could you refresh my memory? Did you take a
4 position on S. David Freeman's confirmation?

5 MR. HELLER: We did not.

6 SENATOR JOHNSON: Can I ask why not? Why this
7 analysis that you're going through here with respect to
8 Mr. Peevey doesn't apply equally to Mr. Freeman?

9 MR. HELLER: I don't think that that's -- I don't
10 think that I'm suggesting that.

11 SENATOR JOHNSON: I'm puzzled as to why you're
12 here opposing this nominee and didn't oppose, didn't take a
13 position, on Mr. Freeman. That's what you just said; right?

14 MR. HELLER: That's right. There is -- that is
15 correct. We did not take a position on Mr. Freeman.

16 CHAIRMAN BURTON: I want to answer that one, one,
17 and then make a comment.

18 One, because what Freeman did do was always
19 public, public power, which he was, but basically what
20 Mr. Peevey's -- we're talking about, I mean, Hugo Black was in
21 the Ku Klux Klan, and he was appointed to the Supreme Court, and
22 was the most liberal member, he and Bill Douglas, in the history
23 of the Court.

24 So, I think what a person, and for whatever
25 reasons, everybody was in the Klan in Alabama when he was kid, I
26 guess.

27 But I think it would be more important to talk
28 about Mr. Peevey's record or your concerns as he's been a

1 Commissioner, as opposed to his life experience that he brought
2 to it. In other words, actions that he's done, or statements on
3 the Commission, not the fact that he was with the utility.

4 SENATOR JOHNSON: I agree with that. I'm just
5 pointing out that the witness, in my opinion, was using a double
6 standard.

7 MR. HELLER: And sir, I simply --

8 CHAIRMAN BURTON: That's okay.

9 MR. HELLER: And I appreciate that.

10 I will put on the record because I think it is
11 essential that on the public record, this is an acknowledgement
12 that the person that is being considered does have a
13 background.

14 CHAIRMAN BURTON: That's Day One clear.

15 MR. HELLER: Then I will simply -- I will confine
16 my statements with regards to his professional career to say
17 that simply in short, Mr. Peevey's professional career presents
18 one big conflict of interest, and leave it at that.

19 And I would like to just add a few points of
20 comments and commentaries that Mr. Peevey has made prior to
21 sitting on the Commission, because they are particularly
22 relevant to his role. And I think it's essential that one
23 recognize that in recent years, Mr. Peevey's work was to
24 encourage deregulation and to oppose regulation.

25 In fact, in Mr. Peevey said very clearly after --
26 first of all, he said in advance of deregulation that this was
27 going to save anywhere from 25 to 40 percent for ratepayers.
28 Suggested that there was a huge electricity regulation tax, was

1 the word that he used, which was his euphemism for regulation,
2 saying that it was a \$55 billion a year tax on electricity
3 consumers, regulation was. And said that the electricity
4 business will simply run better than before, everyone will
5 benefit.

6 And then in January of 2001, when California was
7 suffering under its first series of blackouts, when the
8 Legislature was scrambling to find a solution to ever increasing
9 rates, prices that had gone beyond what anybody had ever even
10 conceived of, Mr. Peevey, when asked a question by the Los
11 Angeles Times, responded, quote, "I'm still an advocate of
12 deregulation."

13 It is our belief there you can't have an advocate
14 of deregulation sitting as your regulator in charge. It is too
15 -- the role of the regulator cannot be taken up by somebody who
16 wants to undo that responsibility.

17 We feel that the history is relevant here.

18 Now, to the issue of Mr. Peevey's career as a
19 Commissioner over the past few months. Much of our concerns
20 have been addressed. I would note that one of the first actions
21 taken by Mr. Peevey was to block a fine against MCI that had to
22 do with consumer protection violations. That has concerned a
23 number of consumer organizations who watched that issue outside
24 of energy.

25 But on the energy issue, which was our concern,
26 and which the Chairman other Members of this Committee have
27 discussed, the first major energy-related action taken by
28 Mr. Peevey was to vote for the direct access deal. That deal,

1 we believe, should not have been voted, certainly not at that
2 time, when there was no exit fee developed. We do not believe
3 that the energy companies that stand to benefit by maintaining
4 their contracts as a result of that should have been given --
5 given that deal. We felt that it was the first evidence of a
6 conflicted Commissioner.

7 Mr. Peevey, as he has acknowledged here, does not
8 hold any conflicting interests, and we certainly believe that
9 and expect that. But you have a history, a professional
10 history, which has created a conflict that we don't -- not only
11 doesn't appear to or -- as you said, there isn't the bending
12 over backwards, Mr. Chairman, that we would need to see to show
13 that this distance has been created.

14 When our -- when the Edison deal was struck, as
15 Senator Johnson has noted was before Mr. Peevey's time, there
16 was a law -- there has since been a lawsuit filed by The Utility
17 Reform Network. However, in the time since Mr. Peevey has been
18 on the Commission, the Commission has been meeting in secret
19 negotiations, in closed door sessions, to develop a similar
20 bailout plan for the Pacific Gas and Electric Company.

21 And our organization has challenged the continued
22 closed door sessions in the California State Supreme Court. And
23 we're very concerned that, as Mr. Peevey suggested earlier,
24 well, not too much happens in closed door sessions. Only the
25 most important things. Only the things that are most expensive
26 for the rate paying public.

27 And we fundamentally believe that we have to have
28 a Commissioner who will not accept ratepayer money discussions

1 to happen in closed sessions, that will put aside the history --
2 or excuse me -- that will stand up in any event, and in every
3 event, for the public, for the ratepayer.

4 And it is our belief that California, in the wake
5 of the deregulation disaster, needs somebody that does not come
6 from that very industry which pillaged our state as it
7 manufactured a crisis and stole billions of dollars from us as
8 ratepayers and as taxpayers and as businesses.

9 For that reason, we do not believe that Mr.
10 Peevey is a suitable nomination to the Public Utilities
11 Commission, and for that reason we urge you to reject his
12 nomination.

13 I do appreciate your time.

14 CHAIRMAN BURTON: Senator Karnette.

15 SENATOR KARNETTE: You know, every group, every
16 professional group, likes to have people who understand their
17 profession evaluate them.

18 I'm confused as to who do you want on the
19 Commission if you don't want somebody with expertise?

20 I'm not saying, necessarily, that this gentleman
21 is the one you want, but it seems to me he understands the
22 industry.

23 I don't want to be on it, that's for sure. I
24 mean, I don't think I would want some lawyers I don't want on
25 there. There are a lot of people I wouldn't want, because they
26 don't understand it.

27 Who do you want?

28 MR. HELLER: I appreciate that, Senator Karnette.

1 I do believe that there are a number of people in the State of
2 California that are very well equipped, and without embarrassing
3 him, I know there's been -- there have been a number of people
4 that have suggested that Mr. Florio should be sitting on the
5 Commission. He's very expert, but he is not the only one.
6 There are a number of people, we believe, that both are equipped
7 to sit on the Commission, and at the same time, don't have a
8 history of making millions of dollars in that industry which he
9 or she would then be asked to regulate, and having a
10 professional career in that industry.

11 And we believe that that sets up a concern.

12 SENATOR KARNETTE: What kind of background? I
13 don't know what kind of background Mr. Florio has.

14 MR. HELLER: And I don't think he's real eager.

15 SENATOR KARNETTE: But what kind of background
16 should a person have that sits on the PUC if not in the
17 industry?

18 And you said regulating, we have judges who are
19 lawyers who then regulate lawyers. We have all kinds of people
20 in the barbering industry who regulate other barbers.

21 So, I don't know if that flies exactly.

22 MR. HELLER: Well, it is our organization's
23 belief that the Public Utilities Commission is at its heart a
24 consumer protection agency. And people that have worked on the
25 issues of energy regulation, telecommunications regulations,
26 without having been in the industry, without having made their
27 -- there are certainly people that could have experience in the
28 industry, who have worked near the industry, or even in it at

1 times.

2 But we are talking about Mr. Peevey as someone
3 who has been an executive in the industry for many, many years.
4 And I think that that rises to a level where it's beyond just
5 having knowledge, and it leads -- and it hits that level of
6 conflict. And that is where our concern lies.

7 SENATOR KARNETTE: Thank you.

8 CHAIRMAN BURTON: If you could, Commissioner
9 Peevey, the MCI issue, that was your first vote on the
10 Commission?

11 MR. PEEVEY: It was the first day of a Commission
12 conference, yes.

13 CHAIRMAN BURTON: First day. What was your
14 theory in not putting the 250 fine on them that probably would
15 have at least paid for the time of the PUC?

16 MR. PEEVEY: I think there a 250 fine in place.
17 It was a much larger amount --

18 CHAIRMAN BURTON: Two hundred and fifty grand
19 penalty.

20 MR. PEEVEY: It was a much larger amount, is the
21 best as I recall.

22 CHAIRMAN BURTON: As I understand it, and I could
23 be wrong, they had to return \$9 million to the customers, so
24 that was unjust enrichment.

25 And then the penalty proposed, which seemed kind
26 of de minimus to me, was like 250. It would have either sent a
27 message that you can get away cheap, or sending a message that
28 at least if you do something, you're going to have to lose more

1 than your unjust enrichment.

2 This was an issue raised by a couple consumer
3 groups.

4 MR. PEEVEY: Yes. That was my first meeting, to
5 be very frank. And I voted with Commissioners Brown and Duque
6 on the matter rather than with Commissioners Wood and Lynch.
7 That's true.

8 I don't know why I was any more the critical
9 third vote than either one of those two were, but I was
10 persuaded by their arguments at the public session rather than
11 by what --

12 CHAIRMAN BURTON: What were the arguments? Can
13 you remember?

14 MR. PEEVEY: I can't recall right now, to be
15 frank.

16 CHAIRMAN BURTON: It wasn't that persuasive.

17 MR. PEEVEY: It didn't linger in my memory.

18 CHAIRMAN BURTON: Any questions of Mr. Heller?

19 All right, next.

20 Thank you, Doug.

21 John White.

22 MR. WHITE: Thank you, Mr. Chairman. I
23 appreciate the Committee's invitation to testify on behalf of
24 the Sierra Club.

25 We don't have a position on Mr. Peevey's
26 nomination, but we appreciate the chance to raise some questions
27 that we think might be useful for any Commissioner that's before
28 you.

1 Unfortunately, the environment hasn't been a
2 significant part of how the Commission has viewed its
3 responsibilities historically, and there are some issues that we
4 think are worth considering, and hope that in the time that
5 Commissioner Peevey serves on the Commission, there'll be an
6 opportunity for some leadership to be undertaken on these
7 issues.

8 First of all, the hydro system is going to remain
9 now with the regulated entities, and that's going on to mean an
10 opportunity for the hydro system to be repaired from an
11 environmental standpoint. That's something where we think the
12 Commission has a significant opportunity to create some
13 beneficial outcomes for both the ratepayers and for the
14 environment. And historically, that's not something they've
15 done.

16 They also have before them coming some projects
17 that are going to have some significant impact on the
18 environment with respect to transmission projects. The Valley
19 Rainbow Project in Riverside-San Diego County has a very
20 significant amount of local concern, and a very important, I
21 think, need for alternatives to be examined. We know that we
22 need more power into the San Diego region, but this is a project
23 that has a long history in the route. And of course, since the
24 route was originally developed, about 150,000 people have moved
25 into the Temecula Valley, and some Indian issues.

26 So, those are two issues where we think the PUC
27 needs to be a good steward and needs to pay attention to more
28 than just the preferences of the utilities.

1 Secondly, renewable energy is something that has
2 been a casualty of the crisis. California used to be the
3 national leader in renewable energy. Unfortunately, one of the
4 consequences of the train wreck on deregulation is that
5 renewable development has all but ceased in this state.

6 The DWR contracts and the utilities' own
7 short-term procurement plans have nothing to offer for
8 renewables.

9 The exit fee issue complicates that issue as
10 well.

11 We're hopeful that in the near term that the
12 Commission can do something about that, maybe with some help
13 from the Legislature. But clearly, we think that renewables
14 need to be more than an afterthought, and the utilities really
15 need to be held accountable.

16 As we creep back into the world where utilities
17 are dominating our lives again after the deregulation
18 experiment, they need to be held accountable for their
19 performance with respect to both renewables and efficiency. We
20 think this is an area where we're hopeful about the
21 possibilities that are present. We don't have any actions yet
22 to give us confidence, but we're hopeful and think that that's
23 an important area. In particular because it's really up to the
24 Commission. Even if we pass a bill like Senator Sher has to
25 have a renewable portfolio standard, and point to the Governor's
26 promise, the Commission is the one that has to execute, and has
27 to get the utilities to do the things they need to do with
28 respect to efficiency and renewables.

1 And third, we, too, share the concerns that
2 have been raised about process and believe that one of the most
3 important parts of the ongoing role of the Commission is going
4 to be building public confidence. You know, we're in situation
5 where the public has lost its faith and lost its trust in our
6 ability to protect them and the state from the actions of the
7 market and the actions of the utilities.

8 And in the specific matter that was referenced
9 earlier with respect to San Diego Gas and Electric, we do think
10 there's reason, given the entire range of behavior by Sempra,
11 San Diego Gas and Electric, the regulated and the unregulated
12 side, for some very careful deliberations on that question.

13 And we actually are hopeful that Senator Dunn's
14 Committee could help us out in this regard because, in fact, the
15 Commission is not able to really investigate the unregulated
16 side of Sempra, which in fact sold us 43 cents a kilowatt hour
17 of power on the spot market. And Sempra has one of the most
18 egregious of the long-term contracts. That's also outside the
19 Commission's jurisdiction.

20 So, we actually think one of the things, in
21 addition to having the Commission's own process be as open and
22 as accessible as possible, we hope that Senator Dunn's committee
23 could actually help the Commission out by helping unravel some
24 of the behavior that Sempra and San Diego Gas and Electric has
25 done over the whole course, because it is, I think, a tangled
26 bit of business and deserving of some further scrutiny.

27 But we look forward to working with Commissioner
28 Peevey, and appreciate the Committee's asking questions and

1 giving us an opportunity to raise some issues that don't always
2 get considered at the front burner.

3 Thank you, Mr. Chairman.

4 MR. PEEVEY: May I make just a brief comment.

5 CHAIRMAN BURTON: Sure.

6 MR. PEEVEY: John, you should be assured that I
7 have a very strong interest in renewables, and a very strong
8 interest in enhanced energy efficiency, which has consequences
9 that are very positive for renewables and for the better
10 husbanding and shepherding of the resources in this state. I'm
11 committed to doing that, and you can assured that you, as I
12 think NRDC and others will tell you, that they're very
13 comfortable there.

14 CHAIRMAN BURTON: Senator Karnette.

15 SENATOR KARNETTE: Either one of you may know the
16 answer to this, but if a power company, let's take Edison for
17 example, and power lines run across a certain area, and there is
18 negotiations, pending negotiations, between Edison and Caltrans,
19 or some other group, construction groups around freeways.

20 Does the PUC get involved in that at all? If
21 there are negotiations for using property that they have that
22 might have been used for environmental --

23 MR. WHITE: I believe that the Commission has
24 jurisdiction over all utility-owned assets, and one --

25 MR. PEEVEY: The answer is yes, it can.

26 SENATOR KARNETTE: And if they were in any kind
27 of negotiations with Caltrans and Edison negotiating, for
28 example, you would have to approve whatever their negotiations

1 are?

2 MR. PEEVEY: Well, I'm not sure. If it's as
3 simple as a left-turn signal or something like that under some
4 right-of-way, I doubt it.

5 But we do have the inherent power, as John White
6 has indicated, to get into almost anything that affects the
7 utility's power lines or any other aspect of their business.

8 SENATOR KARNETTE: But if it related to
9 environmental --

10 MR. PEEVEY: Someone has to bring it to us.

11 SENATOR KARNETTE: And if it related to
12 environmental concerns, who would be involved in that?

13 MR. WHITE: I think the Commission, on a
14 transmission line, for example, would be the lead agency under
15 CEQA and would have to approve the transmission line or a grade
16 separation, for example. And they would also have to approve
17 the disposition or sale of any utility asset as being in the
18 public interest, which is one of the issues --

19 MR. PEEVEY: John, that's the way it was. But
20 after AB 1890, we ceded a lot of that responsibility to the
21 FERC. Not all, but a lot.

22 MR. WHITE: In the case of PG&E's hydro, we are
23 hopeful that they still have jurisdiction over those dams.

24 SENATOR KARNETTE: So, if we have arguments with
25 FERC, where do we go, to our Congress people? Does that help?

26 MR. PEEVEY: Not much. There's not a lot of
27 evidence so far. That's a tough one.

28 But the example is this Path 15, where it's now

1 FERC has moved in and basically usurped what had been
2 historically a state role.

3 CHAIRMAN BURTON: I don't know you would be
4 familiar with this or not, but down in Palm Springs,
5 surprisingly -- in fact, you should know this because I think
6 the deal they have is with Edison. I don't know if you were
7 with Edison when they were doing the deal -- that they had a
8 wind contract. Then, when the wind wasn't blowing or something,
9 they were going to make the windmills go with ethanol. And then
10 Southern Edison was making a claim that ethanol was not a
11 renewable source of energy, like wind was.

12 Do you know that issue at all?

13 MR. PEEVEY: No, I don't.

14 CHAIRMAN BURTON: Ethanol, that's like something
15 that grows in the ground.

16 MR. PEEVEY: Ethanol comes essentially from
17 corn. It is, I guess you could say, a natural fuel in that
18 sense.

19 I know what the issue is. I don't know the
20 specifics in what you're referring to.

21 Basically, you have these wind farms or solar
22 farms. You want to use -- the owners want to use another fuel
23 to ensure -- as a backup for a certain percentage of the time.
24 And historically, it's been -- natural gas has been used.

25 But ethanol, frankly, is a substitute for natural
26 gas; although, it may be more costly, and you have to transport
27 it here, and all those kind of things.

28 So, that's what the applicants have been seeking,

1 is to use ethanol rather than natural gas.

2 I don't know how it plays out in the specific
3 situation.

4 CHAIRMAN BURTON: Edison's point was that it
5 wasn't a renewable resource, where FERC said it was.

6 In other words, you don't know anything about the
7 specifics.

8 MR. PEEVEY: No, but I think it is a renewable
9 resource.

10 CHAIRMAN BURTON: Dan Jacobson.

11 You want to take a break? Break.

12 [Thereupon a brief recess
13 was taken.]

14 CHAIRMAN BURTON: The final witnesses, I hope,
15 is Dan Jacobson of CALPERG.

16 As I told Commissioner Peevey, the purpose of
17 this meeting was not as to the issue of confirmation, because
18 his term will actually be up before his year's up, but because
19 despite his protestations, he is probably one of the more
20 influential members of the Commission in either the first or the
21 third vote.

22 But basically to try to get the Commissioner on a
23 public record on these issues. And then, if he feels like it,
24 if the Governor feels like it, or somebody else feels like it,
25 next year and he's renominated for a full term at that time,
26 we'll deal with the confirmation issue.

27 Go ahead, Mr. Jacobson.

28 MR. JACOBSON: Thank you very much, Mr. Chairman.

1 I'll keep my comments short. I'm just getting over a cold. If
2 my comments aren't clear, I'm happy to repeat them.

3 CALPERG is in neither support or opposition. We
4 don't take a position on the PUC Chairman. There are just
5 simply a set of categories where we think that the PUC Chair
6 should consider issues --

7 CHAIRMAN BURTON: Just for the record, at least
8 at the present, he's not the Chair.

9 MR. JACOBSON: I'm sorry. People on the PUC
10 Commission.

11 CHAIRMAN BURTON: Maybe you know something that
12 the rest of us don't, or he's had an event with the Governor.

13 MR. JACOBSON: First with energy, I think that
14 the questions have been brought up dealing renewable energy, and
15 we're very confident that the Commissioner is a strong supporter
16 of renewable energy.

17 There are a couple of questions that I think were
18 important. The first is with the recent opinion by the
19 Government Accounting Board in terms of FERC and their inability
20 to oversee energy companies. Is there a role in the future that
21 the PUC should play in helping to regulate the energy markets to
22 avoid future energy crises like the one that we've seen? And
23 what sort of steps should the PUC be taking in order to do
24 that?

25 The other is that the Governor has clearly stated
26 his support for the renewable portfolio standard. And I think
27 it would be important for the Commission to not only play a role
28 in that, but what are the other opportunities that we have in

1 order to increase renewable power here in the state. The
2 reports that we've done say that the trouble can come if we do
3 not diversify our energy portfolio, and if we just stay stuck on
4 increasing the amount of energy that we're getting from fossil
5 fuels.

6 The second area of concern that we have deals
7 with telecommunications. As the Internet becomes a greater
8 piece of telecommunications, it becomes clear that the PUC has
9 to take a larger role in ensuring that customers are protected
10 and that they're well served. And the first issue that comes to
11 mind is, as Internet companies are oftentimes gobbled up by
12 other Internet companies, there need to be opportunities to
13 protect the customer so that they aren't taken advantage of,
14 either with the privacy agreements that they had with the first
15 Internet company, or with price agreements that they had with
16 the first Internet company.

17 CHAIRMAN BURTON: Does the PUC have authority to
18 do that?

19 MR. JACOBSON: Well, they should over the
20 telecommunications, since --

21 CHAIRMAN BURTON: No, do they?

22 Do you have authority to do that stuff?

23 MR. PEEVEY: We have authority in the telecom
24 area, but when you get into the Internet, no. Essentially no.
25 And when you get into cell phones, and all that, there's a line,
26 and most of it is not within our purview. Although, we can and
27 have, for example, just recently voted to investigate Singular
28 Wireless because we've had over 3,000 customer complaints.

1 But we don't have the ability by law. It's
2 preempted by federal law in many cases.

3 CHAIRMAN BURTON: Do you have a way of
4 bootstrapping? If you can look at the phone company, whatever
5 the phone company is -- I remember when there was just "the"
6 phone company -- but look at a phone company. Then, if they
7 kind of are spinning off or grabbing, have you got any way to
8 look at some of that?

9 MR. PEEVEY: Yes, yes, we can.

10 CHAIRMAN BURTON: You can look at them as a
11 bootstrap to try and make them behave at other end?

12 MR. PEEVEY: Yes.

13 MR. JACOBSON: We think it would be similar to
14 the PacBell settlement that was just reached of \$27 million,
15 where they were unjustly charging people for DSL service, and
16 that the PUC should take a more active role in being able to
17 look at issues like that.

18 The third is really a general area, that we don't
19 think that the PUC has any control over right now, but it may be
20 an issue or an area that they should start to look into, which
21 is, as the larger -- as a large number of corporations across
22 the country, and some here in California, are having problems
23 with their accounting standards. Is there an opportunity in the
24 future for the PUC to look and to ensure that the companies that
25 they are regulating are going to meet all of the general
26 accounting principles that need to be met so that we don't have
27 the kind of meltdowns that we've had either with Enron or with
28 World Com?

1 That's a future issue. We don't think the PUC
2 has the authority to do that right now, but I think it's one
3 that as we continue to have these problems, it may be one that
4 they want to look at.

5 CHAIRMAN BURTON: Would that take a statute to
6 give them the authority?

7 MR. JACOBSON: That would take, I think, some
8 action from the State Legislature, but it is something that the
9 State Legislature should look into in terms of, if PUC is going
10 to regulate both energy companies and the telecommunication
11 companies and others, there may be an opportunity for us to ask
12 the PUC to step in and to ensure that those companies are
13 meeting the generally accepted accounting principles.

14 CHAIRMAN BURTON: Well, unfortunately, there
15 aren't any generally accepted accounting practices now, except
16 being able to steal.

17 Assemblyman Correa had a bill in the Assembly
18 that died. I have a bill --

19 MR. JACOBSON: SB 1527.

20 CHAIRMAN BURTON: -- that passed over, and we're
21 in a process, maybe, of seeing what it looks like the Congress
22 might actually start doing something now, or to try to move
23 something there.

24 And I was going to talk to Chairman Correa,
25 because if he's got a bill on our side and wants to pick
26 something up, I have no great desire to author a bill or not.
27 But we're trying to do something there.

28 This is far afield of Mr. Peevey's stuff, but the

1 big issue is, do you include what they can do, or do you include
2 what they can't do? In other words, that's the deal. And I can
3 see problems with both.

4 One of the problems with saying what they can't
5 do was the problem with the first assault weapon ban, where they
6 banned AK-47s, so they came up with an AK-51, and it wasn't
7 banned so they could do it. So, if you tell them, "You can't do
8 this," they just fudge a bit.

9 So, that's kind of where we are, not so much with
10 the industry, although they seem to have more sway in the
11 Assembly than they did in the Senate.

12 But also, I can see the logic on both sides. If
13 you list that, every time you say, "You can do those eight
14 things," then all of a sudden something could come up where
15 everybody in the world will say, "Yeah, they ought to do that,"
16 and then they can't do it until you amend the bill, or you give
17 it to the Accounting Board. Which you don't know whether
18 they're an Accounting Board or a Board for Accountants.

19 MR. JACOBSON: That's why the two bills that
20 you're talking about, both the Correa bill and also your bill, I
21 think are important.

22 It is going to be key in anything that passes
23 that you have to define what they can do. From architects to
24 realtors, the professional code is filled with "Here's what you
25 can do."

26 CHAIRMAN BURTON: What you can do.

27 MR. JACOBSON: Yes, what you can.

28 CHAIRMAN BURTON: Is there a process for like the

1 Board of Realtors, or somebody else, can add stuff to it?

2 MR. JACOBSON: The Correa bill had a provision in
3 there that gave the board the authority to say, if there is some
4 new thing that comes up, it should just be approved by the
5 board.

6 CHAIRMAN BURTON: It did do that?

7 MR. JACOBSON: Yes.

8 CHAIRMAN BURTON: That was one of the arguments
9 they were having with me.

10 He accepted that amendment?

11 MR. JACOBSON: Yes. I mean, there were a number
12 of -- I mean, a few amendments that were taken --

13 CHAIRMAN BURTON: I would like us to not take the
14 time now, but I'd really like to talk to you --

15 MR. JACOBSON: Yes, sir.

16 CHAIRMAN BURTON: -- about that thing, because I
17 don't want to deal with the bill. If it's a list of things they
18 can do, and the board can expand on it, or it's a list of things
19 they can't do and they can expand, there ought to be something.

20 To me, it's a flat conflict of interest if I'm
21 making \$20 for auditing your stuff, and \$5 for doing the other
22 stuff, I know where my bread's buttered.

23 MR. JACOBSON: Unfortunately, now you make about
24 \$73 for consulting, and about \$13 for accounting.

25 CHAIRMAN BURTON: Either way, where there's
26 money, there's a problem.

27 MR. JACOBSON: Yes, thanks.

28 CHAIRMAN BURTON: Do you want to close, Mike?

1 MR. PEEVEY: No. I really don't have anything
2 else to say, other than I have to say, I'm slightly amused by
3 the fact that -- I mean, I've had a checkered work career.
4 There's no doubt about it. I was a union official. I was a
5 staff at the University of California. I was in a utility
6 executive. I was the CEO of a company that was in the direct
7 access business.

8 Some people accuse me of being too close to the
9 utilities; other accuse me of being too close to this group or
10 that group.

11 I had my personal fights with Edison, and PG&E,
12 and San Diego that were -- when I was the head of new energy,
13 that were pretty dramatic, and explicit, and lasting.

14 And I'm on the PUC to try to serve the public
15 interest. And I happen to agree that the first charge of the
16 PUC is to protect ratepayers, and that's what I'm committed to
17 doing.

18 I think I bring a background of experience that
19 will allow me to weigh the choices properly and, hopefully, make
20 good decisions in the public interest there.

21 That's what I'm committed to trying to do.

22 CHAIRMAN BURTON: Thank you.

23 As I said to Mike earlier, the purpose of this
24 was not for confirmation because his term's up before he has to
25 be confirmed. But we didn't have a chance to get the most
26 powerful member of the Commission on record.

27 So, thank you very much.

28 MR. PEEVEY: I kind of wish that wishes came

1 true, but anyway, that's another matter.

2 CHAIRMAN BURTON: Be careful what you wish for.
3 Thank you.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately.
7 4:47 P.M.]

8 --ooOoo--
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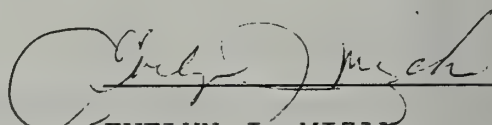
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

30th day of July, 2002.


EVELYN J. MIZAK
Shorthand Reporter



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July 8, 2002

Senator John Burton
State Capitol
Sacramento, CA 95814

RE: July 10th hearings on Public Utilities Commissioner Michael Peevey

Dear Senator Burton;

UCAN submits these written observations about the tenure of Michael Peevey on the California Public Utilities Commission since he assumed office on March 9, 2002. UCAN has long been critical of the activities of Mr. Peevey, both while an executive with Southern California Edison as well as while Mr. Peevey was informally advising the Governor. So the discussion below does not pretend to be an objective analysis of Mr. Peevey's brief tenure. But we do raise a number of issues and questions that warrant investigation prior to Mr. Peevey's confirmation hearing.

In the four short months that Mr. Peevey has been serving as a Public Utilities Commissioner, he has wreaked more havoc than any single Commissioner appointed in over 20 years. And he has been instrumental in creating a regulatory body that sneers at the long-standing precepts of openness and fairness. In short, his brief tenure has been a tragedy that portends disaster in the not-so-distant future.

In this letter, we will raise but four of the alarming activities of Mr. Peevey as Commissioner and Energy Advisor. They are:

1. His disregard for due process in his advocacy of selling out SDG&E customers
2. His role behind the disastrous DWR long-term contracts
3. His anti-consumer vote in an MCI case about which he knew little
4. His attitude towards holding company abuses and the manipulations of the natural gas transportation market

We are also concerned about his philosophies on telecommunications competition (specifically abuses by incumbent LECs), the role of the utility in generation and the need for rate relief for ALL customers --all of which are important issues to be tackled by the Commission this year. And we raise some concerns about Mr. Peevey's role in the operations of the Commission.

DUE PROCESS

Commissioner Peevey has been the leading force behind an effort by SDG&E to settle an appeal of the Commission decision relating to \$348 million in profits reaped by utility during the Energy Crisis. Two months prior to Mr. Peevey's appointment, the Commission flatly rejected a previous "settlement" between SDG&E and the Department of Water Resources.

Based upon sources within the utility, UCAN is informed that shortly after his appointment, Mr. Peevey met with SDG&E/Sempra representatives over dinner. At this informal meeting, plans were laid by which SDG&E would offer an additional \$24 million in exchange for Mr. Peevey's efforts to advance a settlement within the Commission. Since that meeting, UCAN is informed that Mr. Peevey and his staff had additional meetings with SDG&E and he has actively pushed for settlement of this matter in closed-door, unreported sessions. Naturally, there is no tangible proof of Mr. Peevey's role due to the closed nature of the PUC deliberations.

UCAN maintains that Mr. Peevey's meetings with SDG&E/Sempra representatives were likely illegal and unarguably unethical. We have been informed that Mr. Peevey has steadfastly refused to respond to press calls on the matter. And he has not publicly divulged his involvement in this matter. UCAN believes that Mr. Peevey should be forced to fully disclose his involvement in this flouting of due process and, if UCAN's sources are correct, Mr. Peevey should be censured and/or removed from office.

DWR CONTRACTS

The Public Utilities Commission is charged with reviewing the reasonableness of future energy contracts signed by utilities as well as reviewing the propriety of modified existing DWR energy contracts. A Commissioner will have some degree of influence over the renegotiated terms of existing energy contracts as well as the shape of future contracts.

It is for this reason that Mr. Peevey must be compelled to fully disclose his involvement in the current batch of long-term energy contracts to which DWR is committed. UCAN is informed that Mr. Peevey was very active in the negotiation of these contracts in his capacity as a informal advisor to the Governor. UCAN has no problems with the fact that Mr. Peevey -- an experienced utility executive and energy broker --- provided such guidance to the State. It was entirely appropriate and would have even been admirable had the contracts inured to the advantage of the State.

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However, UCAN is very concerned that Mr. Peevey is currently and will be in a position at the Commission to influence the Commission's involvement in future negotiations and acceptance of these contracts. Moreover, Mr. Peevey is currently in a position to influence Commission policy on the nature of regulatory review of energy contracts entered into by utilities, in lieu of DWR. It is important that Mr. Peevey's views on the role of regulatory oversight of such contracts be solicited by the Senate.

Additionally, Mr. Peevey may have played a very active role in the most expensive and controversial DWR contract – the one with Sempra Energy. This contract may come before the Commission in some fashion and it is important that Mr. Peevey be compelled to fully disclose his role in negotiating this controversial contract as well as his opinion about its terms.

ANTI-CONSUMER DECISIONS

Since taking his seat, Mr. Peevey has an opportunity to opine on one notable matter relating to consumer protection. In a complaint brought by UCAN against MCI (C. 98-06-016), it was found that the company had engaged in four distinct examples of overbilling and misbilling as well as refusal to cancel accounts. As a result of UCAN's action, MCI was compelled to return over \$9 million to customers. UCAN proposed that MCI be assessed a modest \$250,000 penalty so as to send a message to the company (and other companies) that such behavior should not be tolerated. Moreover, MCI had imposed significant costs upon Commission staff and should have been required to reimburse the state's General Fund for these costs.

Inexplicably, Mr. Peevey chose to vote on this item in his first day as a seated Commissioner. He could not have had the time to review the case and he did not even have appointed advisors. Yet, he voted against Commissioners Wood and Lynch and was the swing vote in a decision that imposed no fine at all on MCI. (D. 02-03-054). In so doing, he served notice to consumers (and perhaps other Commissioners) that he would be reluctant, if not outright opposed, to serve as a consumer cop. Moreover, being the deciding vote on a matter in which he had no background or meaningful briefing, he displayed a willingness to use his decision-making power in an arbitrary manner.

No comparable cases have come before the Commission since that decision but the message he sent was loud and clear. And from a consumer protection point of view, the message was embarrassing for the State.

PRO-INDUSTRY SENTIMENTS

Mr. Peevey is known to have been a Gubernatorial appointment designed to appease business interests. While regrettable, UCAN does not believe that this fact alone makes a person unfit to serve as Commissioner. There is a legitimate role for Commissioners who are well-versed in business concerns. But Mr. Peevey's pronouncements, public and private, on matters before the Commission raise concerns about his commitment to the important role of regulation in monopoly-dominated industries.

For example, despite the array of holding company abuses that are unfolding on the state and national scene, Mr. Peevey appears to be disinterested in enforcing existing protections against holding company manipulations. This is problematic for California. For example, a recent independent audit found SBC siphoning hundreds of millions of dollars out of its affiliate Pacific Bell. This particular holding company abuse will be coming before the Commission for a vote in the coming months. While it may be inappropriate for Mr. Peevey to opine on this specific case, it is entirely appropriate for him to discuss his general feeling about the need for holding company protections and limitations.

On the natural gas transportation front, the Commission has been very active in pursuing pricing abuses by gas transport companies (and their holding companies). Mr. Peevey appears to have little interest in pursuing such wrongdoing, going so far as to privately frustrate the Commission's efforts in this regard. The Commissioner should be held accountable for his position on this matter, including whether California should continue to seek FERC sanctions against gas pipeline owners who were found to have manipulated prices.

COMMISSION OPERATIONS

It is little secret that the Public Utilities Commission has suffered from almost 20 years of neglect and managerial turmoil. By the late 90s, it had become a largely dysfunctional agency. In the past two years, it has received some much needed revitalization and funding infusions. We are concerned that Mr. Peevey's management style – which has been described by some CPUC personnel as management by intimidation – could undermine the improvements that this Commission has been making in recent years.

It is important that the Senate get a better sense of what Mr. Peevey sees as the role of a Commissioner in making the agency work more effectively. And it is important that he acknowledge the substantial demands of his time to do a proper job

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as Commissioner. Serving as a PUC Commissioner in current times is more than a full-time commitment. The public deserves a sense of whether Mr. Peevey is interested and able to make such a commitment during his tenure.

UCAN appreciates that by speaking out about Commissioner Peevey, we will likely be targeted for retribution. We expect that was part of the motivation behind his underinformed decision on the MCI billing abuse decision. We know for a fact that it is that retribution factor that is discouraging others from speaking out about Mr. Peevey's activities at the Commission. In speaking to Commission staff, it is clear that he is a feared and distrusted new force at the Commission. Moreover, he is an individual who appears to place a low priority upon upon fairness, accessibility and the interests of the underrepresented. To our knowledge, he has done literally no outreach to any interests other than businesses and utilities. While we would not have expected any invitations extended to UCAN, we believe that Mr. Peevey could reasonably be expected to meet with other public interest consumer or environmental groups that often intervene at the Commission. Based upon our cursory reviews of the CPUC visitor log, it would appear that Mr. Peevey has made himself extremely accessible to regulated utilities; in the four months that he has been there, he has had far more meetings with regulated companies than any other Commissioner. We found no evidence of meetings with any public interest representatives.

It is our cheerless obligation to inform the Senate that Mr. Peevey's brief tenure portends for some remarkably bad policymaking and even greater operational dysfunction at this very important regulatory body. During our 20-years of intervention and activity at the PUC, we have interacted with Commissioners who have differing opinions and diametrically opposed ideological orientation from that of UCAN. But with only a few exceptions, we've not encountered a Commissioner with as much potential to be a disruptive and negative force against the public interest. We ask that the Senate use this opportunity to answer the many questions raised by Mr. Peevey's activities as well as to put Mr. Peevey on notice that his methods and his policies are not consistent with the public interest of the State's utility customers.

Respectfully offered,

Michael Shames

Michael Shames
Executive Director

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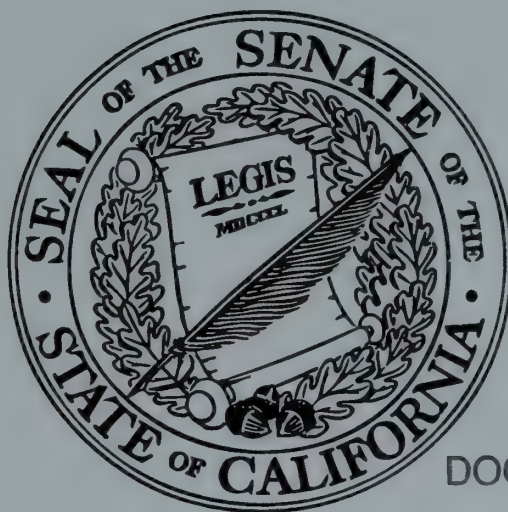
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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

SENATOR WESLEY CHESBRO

BEVERLY WASSON, Member
California Regional Water Quality Control Board
North Coast Region

ART BAGGETT, Chair
State Water Resources Control Board

JOHN W. CORBETT, Member
California Regional Water Quality Control Board
North Coast Region

RICHARD D. GRUNDY, Member
California Regional Water Quality Control Board
North Coast Region

SHAWN P. HARMON, Member
California Regional Water Quality Control Board
North Coast Region



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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: First of all, I would like to announce that Mr. Selvage has withdrawn his name from consideration today, so he's off calendar.

Senator Chesbro, you want to introduce some members?

SENATOR CHESBRO: I'll ask Ms. Wasson to come on forward while I'm introducing her.

I'm really pleased to see so much attention being paid to rural areas. I'm not used to the Legislature showing so much concern, and I do appreciate it.

We have several members of the North Coast Water Quality Control Board being considered by the Rules Committee for confirmation today. I want to say that I appreciate the willingness of anyone to do the fairly thankless task of serving on a regional water quality control board, and they're all to be commended for that.

I'm very pleased to introduce several good friends of mine. First of all, Ms. Bev Wasson, who has been reappointed to continue her service on the North Coast Regional Water Board.

Bev, who among other things, is a grape grower in the Alexander Valley of Sonoma County, but more than just growing grapes, Ms. Wasson had been a leader in the agricultural community, and has also demonstrated to other farmers that sound environmental practices make good business sense. She's shown the environmental community that agriculture can provide a net

1 gain for water quality.

2 She's a fine person and a good friend, and I
3 certainly urge you to support her.

4 While I can't stay for your full hearing, I'd
5 also like to briefly introduce a long-time Humboldt County
6 resident and friend of mine, Mr. John Corbett. Mr. Corbett was
7 the long-time manager of the North Coast Cooperative. He's an
8 attorney with a specialization in water quality law.

9 You'll be having the opportunity to hear from
10 John, and I'm sure you'll appreciate his unique qualifications
11 and his ability to address some of the serious questions that I
12 know the Committee has about what's gone on on the North Coast.

13 But both of these board members have demonstrated
14 a commitment to the Regional Board fulfilling its
15 responsibilities to the waters of the North Coast. I urge your
16 support.

17 I want to thank the Committee for the time and
18 the effort that you've put into meeting your serious oversight
19 responsibilities today.

20 Thank you.

21 CHAIRMAN BURTON: Thank you very much, Senator
22 Chesbro.

23 Ms. Wasson.

24 MS. WASSON: Thank you, and thank you, Senator
25 Chesbro.

26 I'm very glad to be here today, and good
27 afternoon to you all.

28 I've had the good fortune, and sometimes I

1 question whether it's good fortune, of sitting on the Regional
2 Water Board since May of '99 and have gotten to experience a lot
3 of frustrations with working towards improving water quality on
4 the North Coast. One of those has been not having quorums for a
5 number of times during my tenure on the Board.

6 CHAIRMAN BURTON: Is that lack of appointments?

7 MS. WASSON: Lack of appointments, and also
8 resignations.

9 But it does not allow for the timeliness of
10 hearing issues, and that's very, very important. And the one
11 that, I guess, has brought us here is timber issues. And we
12 have been dealing with them. And actually, even after I was
13 appointed, there was an issue that had been brought before our
14 board that has not been resolved totally to my satisfaction to
15 date, but I think we are moving in that direction. It is
16 something that is very serious, but it's also a serious issue
17 for an industry and its survival.

18 There are no easy decisions out there. And we
19 have to look very carefully what kind of decisions we make as
20 they affect everyone. One of the things that I've tried to do
21 in my own community of agriculture is to use my own ranch and my
22 parents' farm as --

23 CHAIRMAN BURTON: Example?

24 MS. WASSON: Example. Actually had people come
25 out for erosion control. And what we actually needed to do to
26 improve the water quality on our own property.

27 It's actually interesting. My parents have been
28 farming in Alexander Valley in Sonoma County all of their lives,

1 and their parents' lives, and my great-grandparents, who came to
2 Sonoma County in the 1860s and '70s.

3 And the practices have drastically changed, and
4 the knowledge base has drastically changed. And it's this, to
5 impart to the entire community what I've learned by sitting on
6 this board is that I wear the hat for the public for water
7 quality for everyone. And that -- what I've learned is that
8 anything that you throw out into that environment gets in our
9 water way. And the best way to keep it clean and pure and good
10 is not to throw anything out in that water way.

11 And we have to do that religiously, and we have
12 to educate people to do that as well.

13 And the issue of sediment, the best thing is not
14 to have it there in the first place. And the knowledge on how
15 to do that, that's our challenge as well as the other toxins
16 that we face.

17 So, I'm open to any questions.

18 CHAIRMAN BURTON: Riunito's in the Alexander
19 Valley?

20 MS. WASSON: No, that's where I live.

21 But I want you to know that across from Riunito
22 is the Drake property, and that was my great-grandparents'--

23 CHAIRMAN BURTON: Drake's Beach?

24 MS. WASSON: Drake's Beach, yes.

25 CHAIRMAN BURTON: Are there still fights in
26 Canyon Seven?

27 MS. WASSON: Yes, I checked out.

28 I wasn't there last night, but the night before,

1 I'm sure there was.

2 CHAIRMAN BURTON: Memories that linger.

3 MS. WASSON: Yes. Actually, that moon is still
4 up, I want you to know. They put it up every summer.

5 CHAIRMAN BURTON: This is very historic.

6 Did you ever jump off the Hacienda Bridge?

7 MS. WASSON: It wasn't there, so no, I have not.

8 CHAIRMAN BURTON: It was there.

9 MS. WASSON: Yes, but I was in Alexander Valley
10 when I was young and not very bright, because I wouldn't jump
11 off it.

12 CHAIRMAN BURTON: That's when you would have
13 jumped off the bridge.

14 MS. WASSON: I didn't know how to swim.

15 CHAIRMAN BURTON: Me neither, but I did it. Made
16 four dollars.

17 You know, more than 80 percent of the rivers and
18 streams in the North Coast are listed as impaired because of the
19 sediment build up.

20 What steps could the Board take to try to deal
21 with that? As you said, the best way to do it is to prevent it,
22 but what steps do you see them being able to take?

23 MS. WASSON: I think it's -- from what my reading
24 is, and I just got -- I got to read the letter between Alexis
25 Straus at EPA and Art Baggett. And they took five tributaries
26 and kind of isolated things.

27 And what it looks like is roads are the major
28 concern; 70 percent of the sediment seems to be coming off roads

1 and how they're designed.

2 I think if we stepped up the priority of looking
3 at road design and getting them in a priority basis, and getting
4 them fixed, and making them sediment proofed.

5 We've actually had some opportunities to do that.
6 On the Resource Conservation District in Sonoma County they just
7 did Palm Road, and they did out-slope. And there are designs,
8 and there are ways in which to treat those roads so that they do
9 not emit sediment.

10 But again, the knowledge is letting everybody
11 know that that's an issue. I've got other friends that have
12 hunting claims, that every year go out with their D2s and clean
13 up, you know, the ditches. And next year, after it rains, they
14 do the same thing. And they need to be informed and directed
15 how to stop that.

16 CHAIRMAN BURTON: I would imagine there's a lot
17 of community newspapers up in that area, right, weeklies and
18 bi-weeklies, and whatever.

19 Is there a way that the Board could put out
20 notices in that?

21 MS. WASSON: We actually have had a lot of
22 training sessions. Again, it's making everybody aware.

23 One of the best things that happened, and it
24 wasn't our board that did it but the Sonoma County Board of
25 Supervisors put in a Hillside Vineyard Ordinance. Since that
26 has been in place, the increase in the amount of sediment
27 control by farmers in the area has increased a hundred fold, and
28 you really see it in the last five to ten years. It's very,

1 very good.

2 And how we've made that also work very well is
3 for those that have been not too careful about their sediment
4 getting into the stream way, they have been fined and have had
5 to fix the situation and repair it. And that's the most
6 important. Really, again, it's keeping the sediment out of the
7 stream, not letting it get there.

8 CHAIRMAN BURTON: Last week the Board issued a
9 clean-up and abatement order to Pacific Lumber for sediment in
10 the Elk River.

11 Why it was issued is easy. Why it took so long,
12 I think you mentioned that.

13 What are the sanctions if the order's not obeyed?

14 MS. WASSON: We will come back --

15 CHAIRMAN BURTON: Maybe Art Baggett could come up
16 and tell us what the State Water Board might do?

17 MS. WASSON: Or Susan.

18 CHAIRMAN BURTON: Art, do you want to just jump
19 right in for a minute?

20 MR. BAGGETT: Art Baggett, Chair of the State
21 Water Resources Control Board.

22 CHAIRMAN BURTON: Did you hear question? The
23 question is, if Pacific Lumber, you know, does not obey the
24 order, what could the State Board do to enforce it?

25 MR. BAGGETT: You can go to court. There's fines
26 for violation of a clean-up abatement order. Fines can be
27 issued by the Regional Board or the State Board. You can go to
28 court to enforce it through equity, through the normal processes

1 of law that way also. I think even district attorneys --

2 CHAIRMAN BURTON: It's been a long time coming,
3 so I assume if they don't follow the order, you're going to take
4 some action.

5 MR. BAGGETT: Right. And I think our Board and
6 the Regional Board, if you look at the enforcement curve over
7 the last three years, has been pretty substantial.

8 CHAIRMAN BURTON: Okay, thanks. Thank you very
9 much.

10 MR. BAGGETT: Thank you.

11 CHAIRMAN BURTON: Does the Department of Forestry
12 pay any attention to the comments you make on timber harvest
13 plans?

14 MS. WASSON: I think they have heard us, but do
15 they always agree with us, no.

16 CHAIRMAN BURTON: Do they do anything? I mean, I
17 know they get the letter.

18 You don't have to be polite. I don't like them
19 much.

20 MS. WASSON: I really don't know, other than we,
21 a couple of years ago, the Agency, the staff, made some
22 recommendations to the Board of Forestry in regards to timber
23 plans.

24 CHAIRMAN BURTON: It's my sense you file like 53
25 nonconcurrency just with some of the timber harvest plans in the
26 last couple of years, and when you do that --

27 MS. WASSON: I think they haven't heard us as
28 much as we'd like them to.

1 CHAIRMAN BURTON: Okay, they haven't paid
2 attention.

3 MS. WASSON: But I think part of that reason is
4 because the fish became the issue once they were listed as
5 endangered. And sometimes old practices are hard to change.

6 CHAIRMAN BURTON: Yeah, but it --

7 MS. WASSON: We need to.

8 CHAIRMAN BURTON: Yeah, exactly.

9 Does the State Water Board normally back you up
10 if you need their back up?

11 MS. WASSON: At times. They haven't all the
12 time.

13 Personally on this issue, I would have done it
14 sooner than later, but we are trying to work within the system.
15 And what we were trying to prevent was getting into the
16 situation where it's a lawsuit, and it's going to take even
17 longer.

18 I would like to see Pacific Lumber clean up both
19 Elk River and the fresh water creek, because those -- not only
20 are they affecting the downstream landowners, but there's
21 flooding, and those things need to be taken care of.

22 CHAIRMAN BURTON: It seems to me that some of the
23 questions I'm asking, you ought to be asking them, because you
24 send them information, comments, and they're so busy they don't
25 seem to see fit to --

26 MS. WASSON: When we started that, it was at my
27 suggestion, I believe, in September of 2000 that we have
28 hearings on the fresh water and Elk River issues. And then we

1 -- it was put off, and eventually vacated, but I had no say in
2 the vacation.

3 Actually I think, you know, what we're doing now
4 is probably maybe more expedient that we'll get some action and
5 actually get some of the sediment out of the streamway. Because
6 that was my goal, let's fix it.

7 CHAIRMAN BURTON: Senator Johnson.

8 SENATOR JOHNSON: No questions.

9 SENATOR KARNETTE: You said the State Board
10 usually went along with the Regional Board?

11 MS. WASSON: At times. I mean, it becomes legal
12 issues.

13 SENATOR KARNETTE: But suppose you do want to
14 sue, do you have to have the State Board and the Regional Board
15 and Forestry --

16 MS. WASSON: It goes from the Regional Board to
17 the State Board, and then it goes to Resources. There's a lot
18 of steps.

19 SENATOR KARNETTE: So, it takes a long time.

20 MS. WASSON: It takes a long time.

21 SENATOR KARNETTE: And if you wanted to speed it
22 up, I'm really concerned about how the Legislature can help in
23 this, because I don't know what the answer is.

24 MS. WASSON: Sometimes, I mean, I would like --
25 we've had to go expeditiously and very carefully as well,
26 because what we have a tendency to do, this is -- the issue is
27 of a large timber company. There's a lot of also small
28 landowners that have a few acres. I mean, this may be hundreds

1 of acres, but they do sustainable harvesting. And once you
2 start adding all these steps, it makes it almost impossible for
3 them to get the value from the timber on their properties.

4 And I'm not against logging, but I think you have
5 to do it appropriately. In this case, I think this is a company
6 that has wanted to get the assets off the property faster than
7 the property can sustain it.

8 SENATOR KARNETTE: Well, you mentioned hearings.
9 Did you have the hearings?

10 MS. WASSON: No, but I have all the paperwork for
11 the hearings if you want about four boxes full of information.

12 SENATOR KARNETTE: If you had hearings, if
13 legislation were necessary, it could be developed after the
14 hearings, perhaps?

15 MS. WASSON: Probably, but I think, again, it
16 would have probably been taken to court.

17 SENATOR KARNETTE: Sometimes hearings work
18 faster. But I'm just trying to figure out how --

19 MS. WASSON: I'm hoping the rest of the industry
20 will take note and improve.

21 SENATOR KARNETTE: I hope they do, too, because
22 this is a big concern for everybody.

23 MS. WASSON: It is a big issue. There's no
24 question.

25 CHAIRMAN BURTON: Well, we have the Forestry
26 Board coming up next January, I believe. At that time, they
27 will have had a chance to do something or not.

28 SENATOR KARNETTE: Do we approve them?

1 CHAIRMAN BURTON: Well, we hear them. We don't
2 necessarily approve them.

3 SENATOR KARNETTE: Okay, thanks.

4 CHAIRMAN BURTON: Senator Knight.

5 SENATOR KNIGHT: No questions.

6 CHAIRMAN BURTON: There was one other question to
7 ask. Basically the questions really have to do not so much with
8 what you did, but what the State Forestry Board didn't do when
9 you sent them stuff.

10 MS. WASSON: Well, I think the goal is to reduce
11 the amount of sediment that gets in the streamway. And there're
12 definitely engineering techniques that can be used to do that.

13 CHAIRMAN BURTON: There is stuff they can do with
14 existing roads?

15 MS. WASSON: Yes.

16 CHAIRMAN BURTON: Who would enforce that? Do you
17 suggest it to whomever --

18 MS. WASSON: We're the ones that actually end up
19 enforcing it if the sediment gets in the streamway.

20 CHAIRMAN BURTON: You have to wait until it
21 does?

22 MS. WASSON: That's unfortunate, but that's
23 usually the fact, yes.

24 CHAIRMAN BURTON: And who would enforce it
25 before, Forestry?

26 MS. WASSON: It's usually voluntarily enforced by
27 landowners observing their properties.

28 I mean, you don't want to be the one that gets in

1 harm's way.

2 But I'll tell you what we do on our property,
3 because we have about ten acres of --

4 CHAIRMAN BURTON: Well, I'm not worried about
5 you. I'm worried about what --

6 MS. WASSON: But I mean, the landowner
7 themselves, we don't have enough people to go out and observe
8 all of them.

9 CHAIRMAN BURTON: But if the landowner allows
10 this stuff to go into the water, conceivably they could end up
11 being fined?

12 MS. WASSON: That's right.

13 CHAIRMAN BURTON: And I guess you or somebody's
14 got a list of the affected landowners. Can you like send them a
15 circular saying, "Look, this is what happens. This could be
16 done to prevent this, and it's probably in your interest to do
17 it because, conceivably, you could be fined."

18 MS. WASSON: Definitely.

19 CHAIRMAN BURTON: Do you guys do that?

20 MS. WASSON: Yes.

21 CHAIRMAN BURTON: Do they pay attention? Some
22 do, some don't.

23 MS. WASSON: Actually, after you get some pretty
24 big fines, it happens. And we actually have a couple of
25 landowners, at least one landowner, that has spent some time in
26 jail.

27 CHAIRMAN BURTON: Were they smart enough to say,
28 "I ought to just do this so I don't have to get in trouble?"

1 MS. WASSON: Actually, most of us have learned
2 by, you know, watching what's happened over here. We don't want
3 to go there.

4 CHAIRMAN BURTON: Any witnesses in support?
5 Witnesses in opposition?

6 Move the nomination.

7 SECRETARY WEBB: Senator Karnette.

8 SENATOR KARNETTE: Aye.

9 SECRETARY WEBB: Karnette Aye. Senator Knight.

10 SENATOR KNIGHT: Aye.

11 SECRETARY WEBB: Knight Aye. Senator Johnson.

12 SENATOR JOHNSON: Aye.

13 SECRETARY WEBB: Johnson Aye. Senator Burton.

14 CHAIRMAN BURTON: Aye.

15 SECRETARY WEBB: Burton Aye. Four to zero.

16 [Thereafter, SENATOR ROMERO
17 voted Aye, making the final
18 vote 5-0 for confirmation.]

19 CHAIRMAN BURTON: Congratulations.

20 MS. WASSON: Thank you very much.

21 CHAIRMAN BURTON: John Corbett.

22 What would be helpful, Mr. Corbett, if you heard
23 the questions that were asked previously, and maybe incorporate
24 them into your statement, if you remember them. Otherwise, I'll
25 repeat them.

26 MR. CORBETT: Okay.

27 CHAIRMAN BURTON: Thank you.

28 My name is John Corbett. I'm honored that I'm

1 being considered by the Senate Rules Committee for appointment
2 to the North Coast Regional Water Quality Control Board.

3 Under the Porter-Cologne Act, the areas within
4 our region, we're the primary state agency responsible for
5 setting water quality standards, for enforcing waste discharge
6 requirements, and for preserving the waters of the state for the
7 use and enjoyment of our citizens.

8 I bring to this position a broad experience in
9 governmental procedures and decision-making, and I fully respect
10 the separation of powers. To me, that means that we take the
11 state law, we apply the facts to it, and we decide the issue
12 fairly without allowing our personal biases to enter into it.

13 I took the oath of office without any
14 reservations whatsoever. And with that, I will close this
15 statement and feel free to ask some questions.

16 I will clarify a couple things based upon the
17 past questions.

18 The first is the Porter-Cologne Act under Section
19 13308 does provide for civil penalties up to \$10,000 a day for
20 failure to comply with clean-up and abatement orders. So, my
21 guess is, if there was a lack of compliance issue, there would
22 be hearing and action on that.

23 CHAIRMAN BURTON: You can impose, or the State
24 Board imposes, or either?

25 MR. CORBETT: The Regional Board can impose it,
26 and then it is subject to review by the State Board.

27 SENATOR KARNETTE: Can they overturn it.

28 MR. CORBETT: I suspect anybody that can review

1 something can overturn it, but before we cross that bridge, I
2 would hope that mutual agreement --

3 CHAIRMAN BURTON: To you knowledge, they haven't
4 done it yet?

5 MR. CORBETT: Yeah.

6 CHAIRMAN BURTON: You're fairly new to the Board;
7 right?

8 MR. CORBETT: Yes, that's correct. I was
9 nominated in November, and had my first meeting, which was a
10 study session, in December.

11 CHAIRMAN BURTON: How many meetings since?

12 MR. CORBETT: We've met monthly since then. So,
13 that would be --

14 CHAIRMAN BURTON: Have you had quorum problems?

15 MR. CORBETT: No. When I came on we had --

16 CHAIRMAN BURTON: Finally had the quorum?

17 MR. CORBETT: We had the quorum; that's correct,
18 sir.

19 CHAIRMAN BURTON: Again, a lot of the questions
20 that I have are kind of what does the State Board of Forestry do
21 when you ask them to do something, or call something to their
22 attention. We figured out they don't do too much. I think
23 that'll be something for them.

24 Senator Johnson.

25 SENATOR JOHNSON: Thank you, Mr. Chairman.

26 This is not really directed at you. It just
27 happens that the question occurs to me while you're sitting
28 there.

1 That is, since one of the nominees withdrew his
2 name from consideration today, what does that do to the quorum
3 situation?

4 MR. CORBETT: We will still have a quorum, sir.

5 SENATOR JOHNSON: Thank you.

6 SENATOR KNIGHT: How many are we are short?

7 MR. CORBETT: Three, so that's barely a quorum.

8 SENATOR JOHNSON: What constitutes a quorum?

9 MR. CORBETT: I believe it's five.

10 CHAIRMAN BURTON: How many on the Board?

11 SENATOR KNIGHT: Nine.

12 MR. CORBETT: Fully staffed, nine.

13 CHAIRMAN BURTON: You know, many years ago, the
14 FBI saw people doing this, and they claimed it was the price of
15 the bill.

16 Do you remember that?

17 [Laughter.]

18 CHAIRMAN BURTON: They were really setting up a
19 tennis agreement.

20 MR. CORBETT: I'll give my answer. To the best
21 of my knowledge, it's nine fully staffed, and five is a quorum.

22 CHAIRMAN BURTON: And you have five on the Board
23 or six?

24 MR. CORBETT: We have seven on the Board.

25 CHAIRMAN BURTON: Seven now, so there's two
26 vacancies?

27 MR. CORBETT: Right. There may be three.

28 CHAIRMAN BURTON: Three with this guy.

1 MR. CORBETT: I'm sorry. Three with Mr. Selvage.

2 CHAIRMAN BURTON: You might send the word. Maybe
3 the Governor might consider some appointments.

4 Because you can't take any action if you don't
5 have a quorum; right?

6 MR. CORBETT: That would be correct.

7 CHAIRMAN BURTON: Nothing better than that if
8 you're the one whom action was going to be taken against.

9 Senator Karnette.

10 SENATOR KARNETTE: No questions.

11 CHAIRMAN BURTON: Witnesses in support?
12 Witnesses in opposition?

13 Move the nomination.

14 SECRETARY WEBB: Senator Karnette.

15 SENATOR KARNETTE: Aye.

16 SECRETARY WEBB: Karnette Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator Johnson.

19 SENATOR JOHNSON: Aye.

20 SECRETARY WEBB: Johnson Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Four to zero.

23 [Thereafter, SENATOR ROMERO
24 voted Aye, making the final
25 vote 5-0 for confirmation.]

26 CHAIRMAN BURTON: Thank you.

27 MR. CORBETT: Thank you.

28 CHAIRMAN BURTON: Mr. Grundy.

1 MR. GRUNDY: Good morning, Mr. Chairman and other
2 Members of the Committee.

3 I want to thank you for this opportunity to
4 appear before you as Governor Davis' nominee.

5 I also wish to thank Congresswoman Lynn Woolsey
6 and Assemblywoman Virginia Strom-Martin for their support of my
7 nomination.

8 I'll try to be brief. I used to work for the
9 United States Senate. I found I got used to a lot of words.

10 When I sought an appointment to the Regional
11 Board, I had just returned to California after a 28 years'
12 career with the United States Senate on energy and environmental
13 issues.

14 My desire was to apply this expertise that I
15 acquired in the federal service to the achievement of the
16 environmental goals here in the State of California. If
17 confirmed, I commend myself to the responsibility that
18 accompanies public service, and I commit myself to the people of
19 the State of California to improve the water quality in the
20 north coast region.

21 I accept this position, anticipating some
22 improvement in the water quality in the region during my tenure,
23 for which there has been a poor legacy in the past.

24 Today I will briefly address a couple of
25 short-term and long-term things. Of particular concern to me is
26 that 30 years have passed since enactment of the Federal Water
27 Pollution Control Act, on which I worked, and enactment of the
28 Porter-Cologne Act.

1 While this progress has been made during this
2 period -- while some progress has been made, as the Chairman
3 said, most of the rivers in the northern part of the state are
4 impaired, and they were not impaired 30 years ago.

5 Your May letter to the nominees address many
6 critical issues, which I fully agree with. Other issues that I
7 think are of concern is the continuing dispute over what should
8 be routine water quality monitoring practices.

9 I come from the background where it is standard
10 practice for pre and post monitoring of any projects that
11 endanger water quality. I do not find that to be the standard
12 practice here in California. In fact, I find that it's still in
13 dispute.

14 I also find here in California there's an
15 extensive reliance upon waivers for the timber industry, as
16 distinguished from what happens in the air pollution field,
17 where you grant somebody a variance. To get the variance, you
18 have to admit that you're subject to control, and you have to
19 agree to do certain things.

20 A waiver means you basically are exempt. And I
21 really think that what's happened here is, the timber industry
22 has developed a history of exemptions, and they are operating on
23 the basis of thinking those exemptions are entitlements, and
24 they're not.

25 CHAIRMAN BURTON: Whose fault is that? The
26 grantor of the waiver?

27 MR. GRUNDY: I think it's been the policy here
28 that the -- I was going to get to that.

1 The policy here is -- was to grant the waiver in
2 the River Basin Plan amendment, and then put the burden upon the
3 Regional Board, that if some somebody impaired the water, then
4 they could come back and regulate them.

5 CHAIRMAN BURTON: Who gives the waiver?

6 MR. GRUNDY: The industry does. Not individual
7 sources. It was done as a blanket waiver across the board.

8 CHAIRMAN BURTON: The forestry industry grants
9 themselves a waiver?

10 MR. GRUNDY: No. The River Basin Plan that was
11 adopted by the state granted the waiver.

12 CHAIRMAN BURTON: And who would that be? Would
13 that be the State Water Board, or the Regional, or whom?

14 MR. GRUNDY: It was proposed, I believe, by the
15 Regional Board and adopted by the State Water Board.

16 CHAIRMAN BURTON: So, the Regional Board at
17 whatever time granted the waiver, and then the waiver was
18 approved.

19 And the waiver's not like for three months. It's
20 in perpetuity?

21 MR. GRUNDY: Well, you just passed a new bill
22 that requires that all these waivers be reviewed, and they can't
23 be for more than five years.

24 But what concerns me is, the effect of the waiver
25 is, the statutes basically take a preventative approach to
26 pollution and say the dischargers should demonstrate that
27 they're not going to pollute.

28 What the waiver has done is reversed that burden

1 of proof, and the discharger is allowed to discharge, and then
2 it's up to Regional Water Board to prove that they're having an
3 effect upon the environment. So therefore, the Regional Water
4 Board has to do the environmental monitoring, and the burden of
5 proof is upon the public agency to catch people, basically.

6 And I think that there is a movement to try and
7 reverse that, but that's one of the fallacies of why we have a
8 problem. The burden of proof is upon the regulatory body to
9 catch --

10 CHAIRMAN BURTON: When they go in with a plan and
11 ask for a waiver, they don't have to prove that the waiver won't
12 cause a problem?

13 MR. GRUNDY: That's right.

14 CHAIRMAN BURTON: Thank you.

15 MR. GRUNDY: It's a bad deal.

16 And to a large extent, that's what's been the
17 problem with the timber harvest plans, is that the -- why
18 there's been nonconcurrence, is that the staff have said to
19 the -- the Regional Board staff have said to the regional
20 forest service people that they haven't adequately demonstrated
21 they're not going to cause a problem.

22 And the forest service people say, "But we're
23 following the practices in the book."

24 CHAIRMAN BURTON: That they wrote.

25 MR. GRUNDY: That forest service people wrote.

26 And we're saying to them, "It isn't sufficient,"
27 particularly when you have your harvesting in multiple areas in
28 the same watershed.

1 But the burden of proof is upon the Regional
2 Board to demonstrate, and go out and gather all the data. So --
3 and they have limited resources.

4 The dispute resolution process, which we've tried
5 to use four times, I understand, in the history, is that you go
6 to the State Board, and the State Board goes to the State
7 Forestry Department and resolves the dispute. The Regional
8 Board does not have authority under the management agency
9 agreement to resolve those disputes directly with the regional
10 forestry department.

11 It's obvious that when you buck everything to the
12 state level, it becomes much more of a political issue than it
13 would be if that management agency was rewritten to allow the
14 Regional Board to do its own negotiation with the Department of
15 Forestry.

16 That's been one of the problems.

17 CHAIRMAN BURTON: Senator Johnson.

18 SENATOR JOHNSON: No questions, Mr. Chairman.

19 CHAIRMAN BURTON: Senator Knight. Senator
20 Karnette.

21 SENATOR KARNETTE: In order to remove that from
22 the forestry plan, the management plan, that says they can have
23 a waiver, what would that require?

24 MR. GRUNDY: Legislation.

25 SENATOR KARNETTE: That's what I thought.
26 Thanks.

27 MR. GRUNDY: You have to go back to the
28 Porter-Cologne Act.

1 SENATOR KARNETTE: Legislation will do it?

2 MR. GRUNDY: That's right.

3 CHAIRMAN BURTON: How old were you when you
4 worked for the U.S. Senate? Just a kid out of college?

5 MR. GRUNDY: I was 30. I went to work for Ed
6 Muskie and Jennings Randolph when I was 30. I was with them for
7 almost 10 years.

8 CHAIRMAN BURTON: Any witnesses in support?
9 Witnesses in opposition?

10 Hearing none, move the nomination.

11 SECRETARY WEBB: Senator Karnette.

12 SENATOR KARNETTE: Aye.

13 SECRETARY WEBB: Karnette Aye. Senator Knight.

14 SENATOR KNIGHT: Aye.

15 SECRETARY WEBB: Knight Aye. Senator Johnson.

16 SENATOR JOHNSON: Aye.

17 SECRETARY WEBB: Johnson Aye. Senator Burton.

18 CHAIRMAN BURTON: Aye.

19 SECRETARY WEBB: Burton Aye. Four to zero.

20 [Thereafter, SENATOR ROMERO
21 voted Aye, making the final
22 vote 5-0 for confirmation.]

23 CHAIRMAN BURTON: Congratulations, sir.

24 MR. GRUNDY: Thank you.

25 CHAIRMAN BURTON: I'd like to see you and the
26 lady from Riunito to get together and start running that board.

27 MR. GRUNDY: Okay.

28 CHAIRMAN BURTON: Shawn Harmon.

1 MR. HARMON: Good afternoon, Mr. Chairman and
2 Senators.

3 My name is Shawn Harmon. I'm a fourth generation
4 Californian and a life-long resident of Ukiah, California. I'm
5 a registered civil engineer, and I'm 33 years old.

6 I'd like to acknowledge to you today that my
7 participation as a Board member over the past eight months has
8 been much more demanding than I envisioned when I volunteered
9 for this position. I've spent countless hours reading volumes
10 and volumes of material in an effort to become acquainted with
11 the many issues and regulations that affect water quality in our
12 region.

13 This has been a huge undertaking, one which I
14 have taken very seriously, and one which I hope to continue if
15 given the opportunity.

16 To be brief, I will close by saying that it is an
17 honor to be here today. I hope to be able to answer any
18 questions that you may have for me.

19 CHAIRMAN BURTON: Thank you very much,
20 Mr. Harmon.

21 Some people have raised the issue that you were
22 the only vote opposed to extending time for more public comment
23 on the dioxin-related matter in the Madd River.

24 Do you remember that? Do you remember what your
25 feelings were on that?

26 MR. HARMON: Yes, I do.

27 The issue at hand, there was a request to allow
28 introduction of comments, because apparently there wasn't enough

1 time when staff's response to comments was submitted back. And
2 basically, the issue was that our staff counsel had permitted --
3 or not permitted -- our staff counsel had advised that the
4 procedure had been followed in terms of noticing and time to
5 comment.

6 So, their recommendation was that we would not be
7 wrong to proceed with the hearing.

8 CHAIRMAN BURTON: You didn't have to. You didn't
9 have to extend the time.

10 MR. HARMON: Correct.

11 CHAIRMAN BURTON: But you could have?

12 MR. HARMON: We could have, correct. They left
13 the option up to the Board.

14 CHAIRMAN BURTON: You went along with the staff?

15 MR. HARMON: Essentially, based on staff
16 counsel's advice, I followed what I --

17 CHAIRMAN BURTON: His advice was, you didn't have
18 to. It wasn't that you couldn't; right?

19 MR. HARMON: Correct.

20 CHAIRMAN BURTON: Why do you think it took so
21 long for the Board to issue the clean-up abatement order on
22 Pacific Lumber? Do you have any idea? Lack of a quorum? Lack
23 of will? What?

24 MR. HARMON: Over the past several years,
25 definitely I would say a lack of a quorum. Based on my
26 knowledge that I've gained over the last eight months, it seems
27 like there was a definite quorum problem.

28 Also, I think defining the scope and the causes



1 of the sedimentation in the streams, how you issue a clean-up
2 and abatement order for --

3 CHAIRMAN BURTON: Would you be willing to seek
4 penalties on Pacific Lumber if they don't comply with the
5 findings?

6 MR. HARMON: Absolutely.

7 CHAIRMAN BURTON: There's been a concern
8 expressed, and I should have asked this of the other Board
9 members, that the Executive Director seems to be a little lax in
10 pursuing the duties for which the Board was created.

11 I just hope that all three of you there would
12 think about prodding the Executive Director, either to get on
13 the ball or to find another job.

14 You don't need to comment on it, but there's been
15 a real concern that especially when you have a board made up of
16 people that aren't doing it full-time, they've got a life to
17 lead, that it's the full-time staff person that drives the
18 engine. And if they aren't willing to aggressively pursue the
19 mandate for which the Board was created, you know, it's kind of
20 tough for people that are doing it on a public service part-time
21 basis to do this.

22 There has been, and there may be here, some
23 opposition expressed. People that I've talked to think that you
24 will enforce the laws that are in the books. And basically, the
25 slot that you're in expires in about a year, and it's going to
26 be my intention, at least for my own vote, to be supportive of
27 you, which may or may not be a mixed blessing, but we're going
28 to watch you, and if you're no good, you can't come back.

1 But we'll be keeping an eye because this is a
2 very important issue. And I think that, you know, a lot of
3 stuff happens up in that area that those of us from the cities
4 don't worry about, but there's a lot dealing with the sediment,
5 a lot dealing with the fish, a lot dealing with the environment,
6 and you guys are the cops. And we don't know what you're doing
7 up there because we're not around.

8 I think Strom-Martin and Senator Chesbro and the
9 others know, but you're basically our law enforcement up there.
10 We expect you to be fair, but we expect you to be right.

11 I am of the belief that the timber industry just
12 for years, because nobody was looking up there, and it's so
13 important, and has been so important to the area, that, you
14 know, they do pretty well, shall we say. I think a lot of the
15 problem, I think, is with your Executive Director, and a lot of
16 the problem's with the Board of Forestry.

17 And one of the reasons that we did not set them
18 for hearing today but in January is, I want to see how they
19 perform. As Senator Johnson said, you just happened to be
20 sitting here during this tirade, so it's not aimed at you.

21 Senator Johnson.

22 SENATOR JOHNSON: No questions.

23 CHAIRMAN BURTON: Senator Karnette. Senator
24 Romero. Senator Knight.

25 Witnesses in support? Witnesses in opposition?

26 Hearing none, I'll move the nomination.

27 SECRETARY WEBB: Senator Karnette.

28 SENATOR KARNETTE: Aye.

1 SECRETARY WEBB: Karnette Aye. Senator Knight.

2 SENATOR KNIGHT: Aye.

3 SECRETARY WEBB: Knight Aye. Senator Romero.

4 SENATOR ROMERO: Aye.

5 SECRETARY WEBB: Romero Aye. Senator Johnson.

6 SENATOR JOHNSON: Aye.

7 SECRETARY WEBB: Johnson Aye. Senator Burton.

8 CHAIRMAN BURTON: Aye.

9 SECRETARY WEBB: Burton Aye. Five to zero.

10 CHAIRMAN BURTON: Congratulations.

11 MR. HARMON: Thank you.

12 [Thereupon this portion of the
13 Senate Rules Committee hearing
14 was terminated at approximately.
15 4:50 P.M.]

16 --ooOoo--
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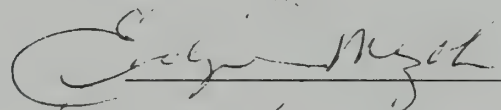
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of August, 2002.


EVELYN J. MIZAK
Shorthand Reporter

Richard D. GRUNDY

950 Wikiup Drive

Santa Rosa, California 95403-1305

Mr. Grundy of Santa Rosa, has more than 30 years of experience in environmental and energy policy planning. He is an engineer and the founder and president of Alexandria Energy Associates, which specializes in providing scientific and technical support to corporate and governmental clients on energy and environmental policies. Mr. Grundy worked for nearly 28 years as a senior staff member in the United States Senate with the Senate Committee on Energy and Natural Resource and with the Senate Committee on Environment and Public Works. He also served as a member of the United States delegation to the United Nations Intergovernmental Negotiations on Climate Change in 1973 and 1974. He also served as a sanitary engineer in the United States Public Health Service from 1959 to 1967. Mr. Grundy earned a bachelor of science degree in electrical engineering from Stanford University and a master of science degree in public health from the University of California, Berkeley. He also did pre-doctoral studies in sanitary and nuclear engineering at the University of California.

Statement (prepared August 6, 2002)

Richard D. GRUNDY

before the

Senate Rules Committee

Sacramento, California

August 7, 2002

Mr. Chairman and fellow members of the Committee. Thank you for this opportunity to appear before you today as Governor Davis' nominee to the North Coast Regional Water Quality Control Board. I also wish to thank Congresswoman Lynn Woolsey and Assemblywoman Virginia Strom Martin for their support of my nomination.

Almost three years ago, I returned to California following a 28-year career as a senior professional staff member of the United States Senate. My issue portfolio emphasized Federal environmental and energy policies and programs, as well as the Congressional budget process. Among the environmental legislation that I had the privileged to work on under the chairmanship of Senator Edmund S. Muskie (D-ME) and Senator Jennings Randolph (D-WV) was the National Environmental Policy Act, the 1972 Federal Water Pollution Control Act, the 1967 Clean Air Act (and the 1970 and 1976 amendments) and the Resource Conservation and Recovery Act (and the 1976 amendments). I then worked for Senator Henry M. Jackson (D-WA) as chairman of the Senate Energy and Natural Resources Committee. Under his leadership I participated in the creation of the U.S. Department of Energy. Among the energy legislation I worked on was the 1978 National Energy Act and the 1994 National Energy Policy Act.

When I sought appointment to the North Coast Regional Water Quality Control Board, my desire was to use the expertise I acquired in Federal public service in the furtherance of the environmental goals of my native state – California.

If confirmed, I commit myself to the responsibility that accompanies public service and I commit myself to the people of the State of California to improve the quality of water in Northern California. I also accept this position anticipating some improvement in water quality during my tenure.

With your indulgence, I offer the following general observations. In making these observations I am aware of the many ongoing statutory mandates – often unfunded

Federal and state mandates – facing the Board. I also am fully aware that any new water quality initiatives ultimately must be reflected in the Board's annual budgets and various work plans, as well as policy and program directives.

Today, I would like to briefly address some of my short-term and long-term goals for the North Coast Regional Water Quality Control Board.

General Observation

More than thirty years have passed since enactment of the Federal Water Pollution Control Act and the Porter Cologne Act. While progress has been made, almost 40 percent of the Nation's waters still do not meet water quality goals established by States. Similarly, the water quality in many of the watersheds in California is considered impaired.

After 30 years, I would have expected the environmental ethic to be ingrained in the manner by which public agencies and private corporations conduct their business in California. I thus am disturbed by the contentious nature of some of the water quality issues and challenges currently pending before the North Coast Regional Water Quality Board.

Your May 2002 questions dealt with several critical issues such as comprehensive Watershed Management, the formulation and implementation of TMDLs (Total Maximum Daily Load), the impact of certain Forest Practice on water quality, and the need for uniform Enforcement Policies. I agree that these are four critical water quality issues that need to be addressed by the North Coast Regional Board. Other issues include continuing disputes over what should be routine water quality monitoring practices, and an extensive reliance on waivers for the timber industry and agriculture. The continued lack of resolution of these issues, particularly waivers, results in the postponement of the enforcement actions necessary to achieve statutory goals and objectives we all have sought for 30 years.

And, I ask that my full statement and my May 2002 responses to your questions be considered a part of my testimony.

I support the resolution of North Coast water quality issues within the region. I also support effective in-stream monitoring of water quality prior to activities that will result in discharges into watersheds, as well as monitoring during and after such discharges have occurred. In addition, I support aggressive, but efficacious enforcement.

I believe that efficacious enforcement can be accomplished through a graduated reliance on the use of Discharge Permits, the issuance of Cease and Desist Orders, the submission of Reports of Waste Discharge and the imposition of Waste Discharge Requirements. I also support expedited mediation among the stakeholders such as those affected by the Humboldt Council petition involving the Pacific Lumber Company.

2002 Strategic Plan

The recent “2002 Strategic Plan” by the State Water Resources Control Board outlines a portfolio of strategic 5-year goals and objectives, as well as twenty-seven (27) key strategic projects. Among the goals are to make surface waters and ground waters safe for drinking and other beneficial uses. Among the objectives are to implement the watershed management initiative (including the development of maximum daily loads for impaired watersheds), to control non-point sources of pollution, to reduce storm water pollution, and to address ground water pollution. The challenge facing the Board and staff under current budget constraints is how to integrate these and the other goals and objectives into ongoing programs and activities of the North Coast Regional Board.

Watershed Management

Thirty years ago the initial priority of State and Federal water quality policies and programs focused correctly on the control and abatement of then existing point source discharges. Federal and state laws also recognized that comprehensive watershed management was eventually necessary for the successful long-term restoration and maintenance of water quality. Such an approach enables the integration of separate programs into a more holistic approach encompassing the comprehensive regulation and enforcement of both point and non-point discharges; for example, the regulation of storm water runoff and runoff from such multiple land uses as agriculture, timber harvesting, mine drainage, and range and dairy cattle areas.

The watershed management approach to water quality was recognized in the 1995 Watershed Management Initiative (WMI) approved by the State Water Resources Control Board. In response, the North Coast Regional Board currently is conducting a seven-year, multi-agency watershed assessment program. Among the goals of this legislative initiative is the development of baseline information and data to guide watershed restoration programs and cooperative efforts among the various agencies.

Effective watershed management requires that all point and non-point sources within a watershed be inventoried. It also requires an understanding of the comparative contributions of such sources to the impairment of water quality. Moreover, this understanding must be available for each pollutant, such as sediment and temperature. A major risk of undertaking enforcement strategies that rely on watershed management is the potential for further delay in the achievement of improvements in water quality.

Total Maximum Daily Loads

Priority needs to be given to the development and implementation of Total Maximum Daily Loads (TMDLs) for critical watersheds. This is a protracted process that will take years to implement, however. The TMDL process was formulated to identify those watersheds where existing discharge limitations are insufficient to achieve and maintain the required water quality objectives over the long-term.

The first phase of the TMDL process is the inclusion of impaired water bodies on the 303(d) list under Federal law. The second phase is to establish technical TMDLs for each pollutant. The third phase is the formulation of a TMDL implementation plan for each TMDL. The fourth phase is the conduct of duly noticed public hearing following a thorough public review and comment process. The Regional Board must then adopt the TMDLs and their implementation plans. The Regional Boards then must submit them for approval by the State Water Resources Control Board and the Office of Administrative Law. Only then can the TMDLs be incorporated in the North Coast Basin Control Plan as a basis for enforcement.

As the final phase, the requirements of the TMDLs implementation plans must be incorporated into the necessary permits and abatement orders to achieve the objectives of the TMDLs. It is envisioned that the TMDLs and their implementation plans will serve as the framework for National Pollution Discharge Elimination System (NPDES) Permits and Waste Discharge Requirements (WDRs). These requirements also may include land use restrictions as well as pollution control measures.

As stated earlier, the TMDL process is not a substitute for the immediate control and abatement of both point and non-point discharges.

Enforcement Policies and practices.

In my judgement, the North Coast Regional Board should give priority to implementation of the draft “*State Water Quality Enforcement Policy*” and the recommendations contained in the 1999 legislative analysis. The North Coast Regional Water Quality Control Board is the State agency with primary responsibility for the coordination and control of water quality in the North Coast Region. As stated in the Porter-Cologne Water Quality Control Act the “state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation.” I agree that “the timely and consistent enforcement of these laws is critical to the success of the water quality program and to ensure that the people of the state have clean water.”

I support an enforcement strategy that requires any potential discharger demonstrate in advance that their discharges will not result in any degradation or impairment of water quality. I support effective in-stream monitoring prior to activities that will result in discharges into watersheds. I also support a graduated enforcement strategy that relies on Discharge Permits, the issuance of Cease and Desist Orders, the submission of Reports of Waste Discharge, the imposition of Waste Discharge Requirements, and effective pre- and post-project in-stream monitoring.

Current Timber Harvest Practices

I believe that priority should be given to the reversal of the impairment of water quality in the North Coast region that has resulted from current and past timber harvest practices. Similarly, priority needs to be given to certain present and future timber harvest operations; particularly, the potential and existing consequences from cumulative timber harvests in certain watersheds.

Sediment impairment of water quality in the North Coast region has been a matter of concern to the Regional Board for many years. The Regional Board’s “*Water Quality Control Plan*” contains an “*Action Plan for Logging Construction, and Associated Activities*” which states that: “The Regional Board considers that implementation of the discharge prohibitions relating to logging, construction, or associate activities can provide appropriate protection to water of the region from these sources of waste, . . . ”

However, the Regional Board’s “*Water Quality Control Plan*” goes on to state that “in the great majority of these activities, will waive the need for Reports of Waste Discharge and Waste Discharge Requirements.” The “*Water Quality Control*

Plan” then observes that “where investigations indicate that the beneficial uses of water may be adversely affected by waste discharges, the staff will require submission of Reports of Waste Discharge.” In my judgment, the effect of this waiver is to reverse the burden of proof from the discharges – to prove that the beneficial uses in the watershed are not impaired – to that of the North Coast Regional Board – to prove that such beneficial uses are impaired.

Burdens of Proof

I believe that industrial timber harvest operations should be subjected to the same burden of proof as other industrial waste dischargers. One of the intents of the national goals set forth in section 101(a)(1) of the Federal Pollution Control Act is to place the burden of proof on industrial waste discharges with the phrase that “the discharges of pollutants into the navigable waters are eliminated by 1985.” Similarly, paragraph (7) establishes as a national objective that “programs for the control of non-point sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of [the FWPCA] be met through the control of both point and non-point sources of pollution.”

Regulation of Timber Harvests

The North Coast Regional Board is the primary agency responsible for protection of the beneficial uses of water within the North Coast Region. However, the State Water Resources Resource Control Board effectively delegated that authority to the Department of Forestry in 1988 when it designated the Board of Forestry (BOF) and the Department of Forestry and Fire Protection (CDF) as the water quality management agencies for non-federal, forested lands in California. Subsequently, a 1988 Management Agency Agreement was entered into among three agencies to improve the forest practice rules for the protection of water quality.

However, this interagency agreement has not resulted in an effective upgrading of Forest Practice Rules to reflect the Board’s concerns for their impact on water quality. Those improvements in timber harvest practices that have occurred were as a result of the Federal Endangered Species Act. For years the North Coast Regional Board and the California Department of Forestry have been unable to resolve certain issues regarding the impact of certain timber harvest procedures on water quality such as the cumulative impact of multiple timber harvest plans within a watershed. Consequently, the Board is forced to disagree with the CDF’s approval of numerous timber harvest plans in impaired watersheds. This situation needs to be

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resolved for the benefit of water quality.

I understand that the BOF finally is undertaking a long awaited upgrade of its Forest Practice Rules. An issues of concern is establishment of a mutually satisfactory approval process that effectively considers the cumulative impact of multiple timber harvest plans in the same watershed. I have already discussed with the Executive Director the continuing need to support the timely revisions of the Forest Practice Rules so that they will more effectively achieve water quality objectives.

Humboldt Watershed Council Petition

I believe that the issues of water quality in the North Coast region should be resolved among the various stakeholders by the North Coast Regional Water Quality Board.– not at the state level. For many reasons, the petition by the Humboldt Watershed Council has languished for too long before the regional and State boards. And I agree with this committee that abatement of the water quality issues addressed by the petition needs to be addressed by the Board and resolved.

At it April 2002 meeting, the Board did not decide whether, or not, to instruct the Executive Director to require the submission of Reports of Waste Discharge for any portion of the five affected watersheds. *The Board reserved that decision for the future and at the April meeting for now left that decision to the Executive Director – which she exercised this week for winter operations by Pacific lumber in the Elk River watershed.*

At its April 2002 meeting, I supported the Board's decision to explore the use of an expedited mediation by the affected local stakeholders and now serve on a subcommittee to move the process forward. The objective is to obtain some immediate improvements in water quality, rather than take an enforcement action that would lead to further delays as a consequence of additional regulatory appeals and litigation. In the interim, the Board directed the Executive Director to give priority to Cleanup and Abatement Orders, and such an order was issued last week by the Executive Director.

Conclusion

Eight months ago when I attended my first meeting of the North Coast Regional Board, I knew it launched a new chapter in my professional life. However, I did not

fully appreciate the severe budgetary constraints that would be imposed on the regional water quality controls Boards. The expertise of the Board's Executive Director and staff are exceptional; however, they are severely constrained to carry out their various statutory and administrative mandates to protect and enhance water quality.

Similarly, I did not appreciate the amount of time and effort that would be required to fulfill my obligation as a Constitutional officer of the State of California. Moreover, I did not appreciate that my ability to meet those same Constitutional obligations would be severely constrained by outdated statutory budgetary limitations enacted in another time and place - reportedly the mid-1970's. [For example, regional air pollution control Hearing Board members are compensated \$400 per day and meet an average of three days a month. By comparison, Regional Water Quality Control Boards are compensated \$100 per day and meet about eleven (11) times a year.] Thus the availability of Board members is for the most part limited to monthly Board meetings which deal with urgent agenda items and those non-delegatable duties set forth in section 13255 of the Porter-Cologne Act.

When the Board's monthly agenda is then overlaid with such issues as the Humboldt Watershed Council Petition, little if any time is available for oversight of the ongoing programs and activities of the regional Board, such as watershed management initiatives, TMDL development and implementation, and the incorporation of new statewide environmental justice and enforcement policies into the Board's programs.

Consequently, the means by which various initiatives are incorporated into the regional board's program priorities and budgets is, for the most part, left to the discretion of the Executive Director and staff with nominal input from the chairman and Board members. This observation is not meant as a criticism of the Executive Director - who is doing a remarkable job under present budgetary constraints. As Constitutional officers of the State, it is our responsibility as Board members to provide guidance and counsel to the Executive Director and Board staff which we are not able to do under the present constraints.

Thank you, Mr. Chairman, for this opportunity to share with you my thoughts and observation regarding my perceived priorities for the North Coast Regional Water Quality Board.

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APPEARANCESMEMBERS PRESENT

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

MEMBERS ABSENT

SENATOR JOHN BURTON, Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

JAMES E. HALL, Warden
Ironwood State Prison

ROY MABRY, State President
Association of Black Correctional Workers

RICHARD TATUM, State President
California Correctional Supervisors Organization

SUZAN L. HUBBARD, Warden
Northern California Women's Facility, Stockton

CHESTER GOYNES, Correctional Lieutenant
California Correctional Supervisors Organization

1 GERALD D. GREENWELL, Job Steward
2 CCPOA, California State Prison at Solano

3 STACY FAIERMAN-MARKS, Member
4 California State Lottery Commission

5 CARLOS RAMOS, Director
6 Stephen P. Teale Data Center

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--ooOoo--

CHAIRMAN JOHNSON: Item Three, Governor's Appointees, the first is James Hall, Warden, Ironwood State Prison.

Come forward, sir. Have a seat. You may begin, and fire when ready.

MR. HALL: Thank you very much. I'm James Hall, Warden at Ironwood State Prison.

Chairman Johnson and respected Members of the Committee, I appreciate the opportunity today to come before you and answer any questions that you may have about myself or my operations at Ironwood State Prison.

I began with the Department of Corrections approximately 27 years ago at San Quentin State Prison, and I've worked five different institutions with various levels, from maximum to minimum.

Again, I'm available to you to answer any questions that you may have at this time.

CHAIRMAN JOHNSON: Senator Karnette.

SENATOR KARNETTE: I would just like to hear about your programs, your education programs. Would you tell us just a little bit about that? You're working with the community colleges?

MR. HALL: Yes. You would probably be referring to the college program.

SENATOR KARNETTE: Yes.

MR. HALL: Our community college in the local

1 community down there is called Palo Verde College, and they have
2 an EOPS grant fund that they use and allow our inmates to
3 participate in AA-level college education programs.

4 At the present time, we have slightly under 300
5 inmates involved in the program, actually enrolled and taking
6 college classes to work toward their AA degree. We graduated
7 two inmates in July. We anticipate we'll graduate another 40
8 inmates in December with AA degrees, and thereafter, even larger
9 numbers.

10 We've also proposed -- I have proposed to the
11 Department an escalation of that number up to 800, and I'm
12 really hoping that we're going to be able to do that, to
13 establish ourselves as one exceptional academic community.

14 SENATOR KARNETTE: Thank you. I commend you for
15 that.

16 MR. HALL: Thank you.

17 CHAIRMAN JOHNSON: Senator Romero.

18 SENATOR ROMERO: Thank you.

19 Let me ask a couple of questions. You're from
20 Blythe. I'm originally from Barstow.

21 It gets hot there; right?

22 MR. HALL: Yes.

23 SENATOR ROMERO: What is the status of air
24 conditioning there at the prison? What kinds of concerns might
25 you raise?

26 As we've gone through this energy crisis, what
27 adaptations has the prison made to deal with the crisis that has
28 unfolded in California?

1 MR. HALL: There's little that we've been able to
2 do to adapt to the energy crisis per se, outside of doing some
3 of the remedial things that you have to do within any
4 environment: making sure that lights turned off, and that
5 you're only using power during those periods which are not peak
6 energy consumption times.

7 But we have in our institution two different
8 types of cooling systems. One is a refrigerated air system,
9 but very few of the buildings actually have that.

10 The other systems that are in place primarily in
11 the housing units are swamp cooler type design. Although that
12 takes the temperature in the housing units down, when it's mixed
13 with humidity, an 83 degree temperature in a housing unit with
14 high humidity can appear rather warm.

15 So, we do have cooling techniques that we use.
16 We have 16 ice plants or ice machines that we use at the
17 institution that produce a tremendous amount of ice. And we
18 also supplement that with purchases of ice.

19 During the four month part of the year last year
20 that was hottest, we used over three million pounds of ice, and
21 provided that in water, and put that in coolers both within the
22 units, in the program areas, and on the yards so the inmates
23 have the opportunity to cool themselves.

24 We also allow inmates to clothe themselves
25 differently during the hot summer months and to wear looser
26 clothing. That's within the facility so it doesn't become a
27 security risk.

28 Also, too, in our programs, if we have an

1 academic or an education program that becomes too warm to have
2 that quality exchange of studies, then we will shut that
3 program, if necessary, down temporarily and allow those inmates
4 to return to the yards and to their facilities, and at no cost
5 to them as far as their credit earning is concerned. We give
6 them as time for that.

7 So, we use a lot of different techniques. And we
8 also will put fans in strategic locations in the units. But
9 generally our temperatures in the units have not exceeded
10 approximately 80 to 83 degrees. Sometimes they may go up as
11 high as 85 degrees. That isn't particularly warm, but when
12 mixed with humidity, it can become a problem.

13 The long range plan that I'd like to see and that
14 I will be submitting is a request for a budget change proposal,
15 capital outlay proposal, to change those air handlers out to a
16 refrigerated air type.

17 They are experimenting at Chuckawalla Valley
18 State Prison with a screen door type device, which is a security
19 type screen in the front of their units. But their design is a
20 little different, in that they have a dormitory setting as
21 opposed to a cell setting. So, the inmates that are in the
22 cells are pretty much confined within those cells and subjected
23 to whatever's coming through the air vents. So, that really
24 wouldn't be particularly helpful.

25 So, I think we need to do a COBCP and, hopefully,
26 remedy that problem. But there are a lot of cooling techniques
27 and things that we do operationally to help.

28 I might also point out that the Blythe community

1 has been there and established for quite some time. And you
2 have Palm Springs, and Phoenix, and other communities in
3 tremendously hot regions.

4 And we do find, though, that the inmates as well
5 as the population do adapt to that particular climate, and they
6 do recreate, and they do all of the kinds of things that other
7 people do. In fact, the inmates quite often spend, even on the
8 hottest days, time playing basketball, or playing baseball, or
9 soccer, or those kinds of things. So, they do acclimate to the
10 climate, so to speak.

11 But there are some long range plans that I'd like
12 to see to ameliorate part of that problem.

13 SENATOR ROMERO: Thank you.

14 Senator Karnette asked about the educational
15 program. I'd like to especially commend you on what sounds like
16 a stellar college program. I'm hopeful that this information is
17 getting out to the other wardens, and we can perhaps take look
18 at how we can encourage these types of programs to go statewide.

19 So, congratulations on that program.

20 MR. HALL: Thank you very much. We're very
21 pleased and proud of the program. We have shared it with other
22 institutions. And Mr. Vaughn next door, at Chuckawalla Valley
23 State Prison, is also working right now with Palo Verde College
24 to begin a program at that institution.

25 SENATOR ROMERO: Thank you.

26 CHAIRMAN JOHNSON: Senator Knight.

27 SENATOR KNIGHT: No questions.

28 CHAIRMAN JOHNSON: Witnesses in support.

1 MR. MABRY: Good afternoon, Chairman Johnson and
2 the Rules Committee Members.

3 My name is Roy Mabry, State President,
4 Association of Black Correctional Workers.

5 I'm here today to completely support Mr. Hall for
6 confirmation as Warden. And I think his history, as you well
7 know, speaks for itself.

8 Sir, I'd like to say to you, congratulations.

9 And if the Committee Members have any questions,
10 I'll be pleased to answer those.

11 CHAIRMAN JOHNSON: Thank you.

12 Further witnesses in support? Yes, sir.

13 MR. TATUM: Committee Members, Senator Johnson,
14 I'm Richard Tatum, the State President of the California
15 Correctional Supervisors Organization, here to request your
16 support for Mr. Hall's confirmation.

17 He has been in Corrections a lot of years with
18 it. Lots of experience. And he has the ethics and the things
19 needed to be a warden.

20 And we request that you confirm him. Thank you.

21 CHAIRMAN JOHNSON: Thank you, sir.

22 All right, any more witnesses in support?

23 Witnesses in opposition?

24 None appearing, what's the pleasure of the
25 Committee?

26 SENATOR KNIGHT: Move the nomination.

27 CHAIRMAN JOHNSON: Do you have any family
28 present?

1 MR. HALL: Yes, I do.

2 Very briefly, I'll just start with my wife, my
3 inspiration, Lorraine Hall.

4 And it could probably take me quite sometime,
5 because we have a number of family members here. I have my
6 mother here, my grandmother. She came all the way up from Pico
7 Rivera to be here today. I appreciate that.

8 So anyway, I would like to introduce them briefly
9 and thank them very much for all the support, particularly my
10 wife, who's put up with me for quite some time.

11 SENATOR ROMERO: Notice, he pointed out the
12 women.

13 CHAIRMAN JOHNSON: I'm a married man myself.

14 [Laughter.]

15 CHAIRMAN JOHNSON: There's been a motion.
16 Secretary, call the roll.

17 SECRETARY WEBB: Senator Karnette.

18 SENATOR KARNETTE: Aye.

19 SECRETARY WEBB: Karnette Aye. Senator Knight.

20 SENATOR KNIGHT: Aye.

21 SECRETARY WEBB: Knight Aye. Senator Romero.

22 SENATOR ROMERO: Aye.

23 SECRETARY WEBB: Romero Aye. Senator Johnson.

24 CHAIRMAN JOHNSON: Aye.

25 SECRETARY WEBB: Johnson Aye. Four to zero.

26 CHAIRMAN JOHNSON: Congratulations.

27 MR. HALL: Thank you.

28 CHAIRMAN JOHNSON: Suzan Hubbard, Warden,

1 Northern California Women's Facility, Stockton.

2 MS. HUBBARD: Good afternoon, Senator Johnson and
3 other Members of the Senate Rules Committee.

4 Thank you for your consideration today as my
5 confirmation as Warden of the Northern California Women's
6 Facility in Stockton.

7 I believe that my formal education, with a degree
8 in social work from the University of California at Berkeley,
9 and my near 23 years of experience in California prisons, to
10 include San Quentin State Prison, CSP Solano, California Medical
11 Facility, CSP Sacramento, Mule Creek State Prison, Central
12 California Women's Facility --

13 CHAIRMAN JOHNSON: It might be better if you told
14 us where you hadn't worked.

15 [Laughter.]

16 MS. HUBBARD: -- and the Northern California
17 Women's Facility have well prepared me for the position of
18 Warden.

19 I would like to express my appreciation to the
20 staff at each of those prisons for their unwavering professional
21 support.

22 I would be happy to address any questions you may
23 have.

24 CHAIRMAN JOHNSON: Senator Karnette.

25 SENATOR KARNETTE: Do you have an educational
26 program as well of some kind? Would you tell us just a little
27 about it?

28 MS. HUBBARD: Yes. We have just entered into a

1 partnership with St. Mary's College in Moraga. They have
2 received a grant to come to our prison and provide an AA program
3 for our inmates. It will be at no cost to the state or to the
4 inmates.

5 We had 80 inmates show up --

6 SENATOR KARNETTE: You said it's no cost to the
7 state.

8 MS. HUBBARD: How do we do that? St. Mary's is a
9 private college, and they are providing all the instructors and
10 the course work materials to us.

11 They received a grant, and they're interested in
12 providing a college program to women. They knocked on our door.
13 There's a former CDC employee that works at St. Mary's, and we
14 were very glad to welcome them at our prison.

15 SENATOR KNIGHT: Where do the grants come from?

16 MS. HUBBARD: St. Mary's arranged for that,
17 Senator, so I'm not aware of that.

18 SENATOR KNIGHT: Federal grants or state
19 grants?

20 MS. HUBBARD: I don't know. I can find that out
21 for you, though, Senator.

22 CHAIRMAN JOHNSON: Further questions? Senator
23 Romero.

24 SENATOR ROMERO: Thank you.

25 Again, I'm interested in the educational issues,
26 so I'll want to learn more about the college program as well.

27 Let me ask you about some of your responses on
28 the health care issues, a couple of concerns that I had. And

1 that is that when Senate staff visited, they were informed that
2 there's approximately a 40 percent no-show rate for
3 appointments.

4 Can you help the Committee understand what
5 contributes to this?

6 MS. HUBBARD: In recently becoming aware of that,
7 I found two issues. One in a no-show rate for inmates that
8 would come to our dental clinic for appointments that they had
9 been given duckets or appointments, but they were just not
10 showing up.

11 We have systems within the prison to go look for
12 those inmates. We're responsible to know where inmates are at
13 all times, but our health care staff had not been doing that.

14 So, we formed a committee. We re-educated people
15 about how we can go and find inmates, get them off their job,
16 get them out of their cell block, and get them to their
17 appointments. That has already had a tremendous impact.

18 SENATOR ROMERO: So, you believe that you're
19 beginning to see a turnaround, and we shouldn't see that 40
20 percent number if we were to go back and visit in a certain
21 period of time?

22 MS. HUBBARD: That's correct.

23 SENATOR ROMERO: Then just a second question
24 related to health care, and that's for nonemergency appointments
25 as well, too.

26 There is on average it looks like about a
27 three-month waiting period. Again, what contributes to that?
28 Seems like a long delay.

1 MS. HUBBARD: There's a combination of issues
2 there. We're a very small facility. So, besides the on-site
3 staff that we have, many of our inmates have to go to the
4 community for their services. So, there's issues of the health
5 care manager evaluates and decides the order that the inmates
6 will go out in.

7 And then, we are using the facilities that other
8 community members are using, so we are having to make
9 appointments with doctors just like other citizens in the
10 community. So many times, we are having to wait for
11 appointments for our inmates.

12 SENATOR ROMERO: Thank you.

13 CHAIRMAN JOHNSON: Senator Knight.

14 SENATOR KNIGHT: No questions.

15 CHAIRMAN JOHNSON: Two of my top staff people
16 have recently been in your prison. I hasten to add as
17 visitors.

18 Can we hear from witnesses in support, please.

19 MR. MABRY: Hi again. Roy Mabry, State
20 President, Association of Black Correctional Workers.

21 Generally I'll do support for the other candidate
22 if that's my intent when I come up and do the initial
23 conversation, but because of Sue trying to get here so many
24 times, I want to make a personal appearance to come up and do
25 this.

26 We're giving her 100 percent of our support, and
27 I'm finally glad we got to this point without a lot of
28 opposition.

1 CHAIRMAN JOHNSON: Thank you, sir.

2 Further witnesses in support?

3 MR. GOYNES: My name is Chester Goynes. I'm a
4 lieutenant at NCWF. I'm also the President of CCSO, the local
5 Chapter 32.

6 We are in full support of Ms. Hubbard. I think
7 that she'll do a good job. She is very professional. She has
8 provided training for supervisors with a shoe-string budget, and
9 I just want to congratulate her.

10 I hope that you go ahead and make that
11 confirmation.

12 CHAIRMAN JOHNSON: Thank you, sir.

13 Any more witnesses in support? Please, come on
14 down.

15 MR. TATUM: I'm Richard Tatum, the State
16 President --

17 CHAIRMAN JOHNSON: Still?

18 MR. TATUM: Yeah, still here.

19 California Correctional Supervisors Organization.

20 I'd just like to say that Ms. Hubbard, we fully
21 support her and the chapter does. I think that it's been a long
22 time coming, and the Department's missed out on not having a
23 very good Warden.

24 We request that you confirm.

25 CHAIRMAN JOHNSON: Remedy that error, we got
26 you.

27 Further witnesses in support? Yes, sir.

28 MR. GREENWELL: I'm Officer Greenwell, Gerald

1 Greenwell, from CSP Solano. I'm the Chief job Steward there for
2 CCPOA.

3 I fully support Sue Hubbard. We may have had our
4 differences sometimes, but that's part of the business, nothing
5 personal. And I think she'd make a very good Warden.

6 Thank you.

7 CHAIRMAN JOHNSON: Thank you, sir.

8 Witnesses in opposition?

9 Do you have any family here that you'd care to
10 introduce?

11 MS. HUBBARD: Yes, I do. I have my father, Dan
12 Chandler. And the man of my dreams, Mel Hamilton.

13 And I would like to acknowledge, there's many
14 other people in the room that are part of, as my friend Theresa
15 would say, my Corrections family. I thank them for being here.

16 CHAIRMAN JOHNSON: All right.

17 What's the pleasure of the Committee?

18 SENATOR KNIGHT: Move it.

19 CHAIRMAN JOHNSON: Secretary, call the roll.

20 SECRETARY WEBB: Senator Karnette.

21 SENATOR KARNETTE: Aye.

22 SECRETARY WEBB: Karnette Aye. Senator Knight.

23 SENATOR KNIGHT: Aye.

24 SECRETARY WEBB: Knight Aye. Senator Romero.

25 SENATOR ROMERO: Aye.

26 SECRETARY WEBB: Romero Aye. Senator Johnson.

27 CHAIRMAN JOHNSON: Aye.

28 SECRETARY WEBB: Johnson Aye. Four to zero.

1 CHAIRMAN JOHNSON: Congratulations.

2 MS. HUBBARD: Thank you.

3 CHAIRMAN JOHNSON: Stacy Faierman-Marks to the
4 State Lottery Commission.

5 I hope I didn't mangle your name.

6 MS. FAIERMAN-MARKS: You actually did a very good
7 job.

8 CHAIRMAN JOHNSON: Thank you.

9 Well, I ought to quit while I'm ahead, but go
10 right ahead.

11 MS. FAIERMAN-MARKS: I feel so lonely.
12 Everyone's leaving.

13 Thank you for this opportunity, Senator Johnson
14 and fellow Committee Members.

15 As you said it so correctly, my name's Stacy
16 Faierman-Marks. And I am here to hopefully be confirmed for the
17 California State Lottery Commission position.

18 I feel like this is a position I was made for.
19 One of these days I've always dreamed about because of my
20 background. I'm a lawyer, and also I founded a business, which
21 the business is a business which consists of basically trying to
22 get education to as many people as possible, quality
23 information. And as a result of that, I had a penchant for
24 being in this position as a Commissioner, since the money, as
25 per the public benefit for the California State Lottery Act,
26 does go to education.

27 And if there's any other questions you'd like to
28 ask based on my statement and goals and my personal history, I'd

1 be happy to answer them.

2 CHAIRMAN JOHNSON: Senator Karnette.

3 SENATOR KARNETTE: There was one thing. I know
4 Senator Burton, since he isn't here, he was concerned about that
5 brochure. Do you remember the brochure that was brought up?
6 Are you familiar with what I'm talking about?

7 MS. FAIERMAN-MARKS: Yes, I am.

8 SENATOR KARNETTE: I had forgotten about it.
9 Have you looked at that?

10 MS. FAIERMAN-MARKS: Great minds think alike,
11 because the Lottery would agree with Senator Burton.

12 Just to give you a little history, to expand on
13 that, as I understand it, this relates to the problem gambling
14 situation.

15 And the Lottery has been very proactive with that
16 situation. And over the last three years, we have instituted a
17 program. Been very proactive in trying to basically get
18 awareness out to the people of the problem gambling situation
19 and provide services.

20 So, as part of that program, what we have done
21 is, we have one item is the brochure. That's in addition to us
22 printing on our Instant Game tickets 1-800 numbers, which
23 connects people to 24-7 trained counselors. So, there will be
24 always someone there available if someone calls that number.

25 The brochure, which is available at retailers,
26 has detailed information which people can read to help them with
27 problem gambling.

28 I believe the issue that Senator Burton had was

1 that it was basically user unfriendly.

2 SENATOR KARNETTE: That was his issue.

3 MS. FAIERMAN-MARKS: So, in terms of that, the
4 Lottery would agree with that, and they are now in the process
5 of making it user friendly, and trying to make it -- as I
6 understand, there was a lot of content on that. And they're
7 trying to streamline that to make it -- so that there's more
8 bullet points and more readable.

9 CHAIRMAN JOHNSON: Senator Romero.

10 SENATOR ROMERO: The National Gambling Commission
11 has discussed the issue of 18-year-olds gambling. There's been
12 a suggestion of looking at raising that age to 21.

13 What are your thoughts on that end? What do you
14 cite as a reason to support your position?

15 MS. FAIERMAN-MARKS: In terms of just as a
16 general rule of thumb, as a Lottery Commissioner, I put aside my
17 personal thoughts, and basically I would vote in favor or
18 against whatever the Legislators believe is appropriate, because
19 that is a hot issue, and you do have more information.

20 What I see before me is that right now, in terms
21 of what 18-year-olds are allowed to do, they're allowed to vote.
22 They're allowed to smoke. They're allowed to drive.

23 SENATOR ROMERO: Blame the Legislature as well on
24 that.

25 MS. FAIERMAN-MARKS: On the other hand, they
26 aren't allowed to drink.

27 So, I would basically bow down to what the
28 Legislature believes is appropriate.

1 SENATOR KNIGHT: They're allowed to fight, too.

2 MS. FAIERMAN-MARKS: And they're allowed to thank
3 you, and be nice to you.

4 SENATOR ROMERO: Thank you.

5 CHAIRMAN JOHNSON: Senator Knight.

6 SENATOR KNIGHT: No questions.

7 CHAIRMAN JOHNSON: Witnesses in support?
8 Witnesses in opposition?

9 Have you any family members you'd care to
10 introduce?

11 MS. FAIERMAN-MARKS: I was tempted to bring my
12 three-month-old baby, but at this point I might be burping him
13 or feeding him, so I declined.

14 CHAIRMAN JOHNSON: All right, no three-month-old
15 baby.

16 SENATOR KNIGHT: Move it.

17 CHAIRMAN JOHNSON: Motion has been made.
18 Secretary, call the roll.

19 SECRETARY WEBB: Senator Karnette.

20 SENATOR KARNETTE: Aye.

21 SECRETARY WEBB: Karnette Aye. Senator Knight.

22 SENATOR KNIGHT: Aye.

23 SECRETARY WEBB: Knight Aye. Senator Romero.

24 SENATOR ROMERO: Aye.

25 SECRETARY WEBB: Romero Aye. Senator Johnson.

26 CHAIRMAN JOHNSON: Aye.

27 SECRETARY WEBB: Johnson Aye. Four to zero.

28 CHAIRMAN JOHNSON: Congratulations.

1 MS. FAIERMAN-MARKS: Thank you.

2 CHAIRMAN JOHNSON: Carlos Ramos, Director of the
3 Teale Data Center.

4 And Mr. Ramos, I'm sure you're aware, the
5 Committee's very interested in hearing some elaboration
6 regarding the security breach earlier in the year, and what the
7 circumstances were that led up to that, and what has been done
8 since that time.

9 If I can sort of start out, it's my understanding
10 that the Governor last fall issued an Executive Order with
11 respect to making sure that all of our computer systems were
12 secure.

13 So, if you could begin your comments by telling
14 us what the Executive Order entailed, and whether or not the
15 Teale Data Center fulfilled the requirements of that Executive
16 Order.

17 MR. RAMOS: Certainly, Mr. Chair and Members.

18 Carlos Ramos, Director of the Teale Data Center.

19 My understanding of the Executive Order that was
20 issued, it essentially placed some requirements on the
21 Department of Information Technology to ensure that the state's
22 IT infrastructure was secure.

23 As a part of that, the Department of Information
24 Technology was required to go out, do an assessment of state
25 departments to make sure that they had in place security
26 measures, policies and procedures to make sure that our
27 information systems were secure. And the Department of
28 Information Technology did that by sending out essentially a

1 survey and a self-assessment requirement for departments.

2 So, as a department, we were asked to certify
3 that we did in fact have security measures in place, meaning
4 that we had measures to protect our information security assets,
5 that we had policies in place to make sure that our information
6 security assets were safe-guarded.

7 We did certify to that at Teale.

8 CHAIRMAN JOHNSON: What was the basis for the
9 certification? Did you go around and actually -- did you order
10 a physical check? How did that operate?

11 MR. RAMOS: The way that we did our assessment
12 was that our information security office went out and did
13 basically a sampling of the systems that we had over at Teale.
14 We did look to make sure that we had in place security policies
15 and processes and procedures that ensured that our systems
16 were --

17 CHAIRMAN JOHNSON: But were there performed
18 actual physical checks of each of the systems that you
19 maintained?

20 MR. RAMOS: Not every single system. We did a
21 sampling of the systems.

22 We did do physical checks. And we do, on a
23 regular basis, do security scans.

24 CHAIRMAN JOHNSON: It's my understanding that the
25 Executive Order was really in response to the attacks of last
26 September at the World Trade Center and at the Pentagon. And
27 given the very serious nature of those attacks, and that the
28 Executive Order followed on that, wouldn't it have been prudent

1 to conduct a very thorough examination?

2 I'm well known as the computer expert, not. I'm
3 computer ignorant and proud, as I've told you before.

4 But these questions about firewalls, and security
5 measures, and patches to systems, so on, what kind of an
6 evaluation was done to make sure that, for example, patches that
7 had been suggested by the suppliers of these systems, that they
8 were in fact added and implemented? What were the procedures?
9 Was it just left to chance? How did that work?

10 MR. RAMOS: No. Let me tell you first of all
11 what our procedures were back then, and what they are now.

12 In terms of the patches and firewalls, and other
13 security measures that we put in place, we did have, even on the
14 State Controller system that was -- that was hacked, security
15 measures in place. It was not behind what we call our firewall,
16 but we did have other perimeter access, security measures in
17 place.

18 We had essentially a segment of our network set
19 aside specifically for that, with some of the same firewall
20 sorts of capabilities.

21 In terms of the patches, our requirements at
22 Teale are that patches are applied to systems as soon as they
23 become available. So, we did have that requirement in place.
24 We did have --

25 CHAIRMAN JOHNSON: One of the issues that's come
26 up is that in applying these patches, they're cumulative. So,
27 if four patches over a period of time are recommended, and the
28 first three aren't applied, then trying to apply the fourth

1 patch, that assumes that the earlier patches, if I understand
2 correctly, were applied.

3 Is that correct?

4 MR. RAMOS: That's not my understanding of the
5 way the patches work.

6 My understanding is that the patches, as they --
7 they are cumulative in that as you apply later patches, they
8 catch you up on your earlier patches, a reason being that not
9 all patches are always going to be applied. Usually you have to
10 make an assessment as to whether or not they address a
11 particular vulnerability -- they address particular
12 vulnerability, if they are, you know, based on the configuration
13 of the particular system that you have.

14 So, in fact, we don't apply every patch that
15 comes out. In fact, in some cases you have to do an assessment.
16 Actually, in all cases you have to do an assessment as to
17 whether or not --

18 CHAIRMAN JOHNSON: What's the typical timeframe
19 that's involved?

20 MR. RAMOS: To apply the patches.

21 CHAIRMAN JOHNSON: Yes.

22 MR. RAMOS: If it's a security risk, our
23 requirement is that it be as soon as possible, and basically
24 immediately.

25 Now, on the particular system that we had, the
26 State Controller's system, there was a -- there was a cycle that
27 we would go through on that one. There was -- there's two
28 servers on that system, a primary server and a backup server.

1 It's an old system built on older technology. So our cycle on
2 that one was to apply it first to the backup server to test it,
3 make sure that applying the patch, that you don't actually break
4 the system. Run it through two payroll cycles, and then apply
5 it to the primary server.

6 The patch had been applied to the backup server.
7 It did not get applied to the primary server. The reason for
8 that, I think, there's really two reasons for it.

9 One is, there was some human error involved in
10 that.

11 And then secondly --

12 CHAIRMAN JOHNSON: Can you elaborate on human
13 error for me just a little?

14 MR. RAMOS: The person responsible for patching
15 it just never got back to patch it. The systemic --

16 CHAIRMAN JOHNSON: Went on to bigger and better
17 things or what?

18 MR. RAMOS: I think he just didn't get back to
19 doing it.

20 There is a bit of a resource issue in that unit,
21 so --

22 CHAIRMAN JOHNSON: Let me ask the question, since
23 this incident with the Controller's data, have you performed a
24 detailed audit on all of the systems that you maintain? And how
25 many of those required patches that had not been previously
26 applied?

27 MR. RAMOS: We have gone back and inventoried all
28 of our servers and documented the configurations of each of

1 those.

2 We did find one or two others that had patch
3 dates that were, at least in my mind, somewhat old. So, we went
4 back and asked, and tried to figure out why it was that those
5 had not been patched, or why the patch dates on those were
6 somewhat old.

7 CHAIRMAN JOHNSON: Didn't someone at the Data
8 Center have a responsibility for signing off, one way or the
9 other? Either patch was applied, or it wasn't applied for this
10 reason?

11 What's the timeframe for that?

12 MR. RAMOS: Yes, there is a responsibility to do
13 that. And really, I think, that was the second thing that we
14 found.

15 As I mentioned, the first thing that we found is
16 there was some human error involved.

17 The second one, I think, was more of a systemic
18 issue in terms of, we have requirements that these be patched.
19 What was happening at the Data Center is that individual
20 managers of individual units that were responsible for specific
21 sorts of systems each used different methods for logging, and
22 tracking, and monitoring when the patches were being applied,
23 and going back and double-checking them. That's the problem.

24 Because what should have happened is, when that
25 server wasn't patched, the unit managers should have been able
26 come back monthly or on a semi-quarterly basis and say, "Hey,
27 wait a minute. This server hasn't been patched. You know, why
28 haven't you gotten back to it."

1 CHAIRMAN JOHNSON: Why the hell not?

2 MR. RAMOS: Exactly.

3 And so, we've changed that. Now we've now
4 documented the configuration of all of our servers. We have in
5 place a process that requires every server to be -- to have a
6 log that says when it was last maintained, just routine
7 maintenance, when it was last patched. And the person that's
8 responsible for that has to sign off on it.

9 Once they get -- once they do that, the unit
10 managers are held responsible for that.

11 CHAIRMAN JOHNSON: Can you give us an idea of how
12 many patches that had been suggested -- during the course of
13 your recent audits, how many patches were floating out there
14 that hadn't been applied?

15 MR. RAMOS: I don't have that information here.
16 I know that there was at least two systems that had older patch
17 dates.

18 CHAIRMAN JOHNSON: And in these systems, were
19 there multiple patches that had not been applied?

20 MR. RAMOS: I don't have that information here,
21 Senator. I'm sorry. I can certainly get that and bring it back
22 to you.

23 CHAIRMAN JOHNSON: I would think in terms of
24 security -- again, I admit as I have in the past, I'm computer
25 ignorant and proud, but it would seem to me that there would be
26 a high priority even before, you know, the terrorist events of
27 last fall, to apply patches that relate to security.

28 Senator Karnette.

1 SENATOR KARNETTE: I'm interested in similar
2 things as Senator Johnson was talking about.

3 I'm interested in the log. You talk about the
4 log. And you have these different managers and different
5 areas.

6 Now, is there one person -- and I don't know
7 whether it would be yourself or someone else -- who checks each
8 log? Because it really gets down to that; doesn't it?

9 Can we be sure? I don't know if you can ever be
10 absolutely sure, but can we be almost absolutely sure that that
11 will be done hereafter, the logs? And logs will be kept?

12 Because if someone checks the logs all the time,
13 and you know when somebody signed off on them, people really
14 know they're responsible.

15 I think that's what you were getting at. Is that
16 not true?

17 MR. RAMOS: Right. The answer is, when -- we do
18 have in place now, we did not at that point have in place, a
19 consistently applied across-the-Data-Center process and
20 mechanism to make sure that logs were verified, that -- our
21 information security office was going around and doing spot
22 checks or audits on -- not only on the systems, but actually on
23 the management.

24 SENATOR KARNETTE: If you're checking them, just
25 give us an idea, how many different logs would there be?

26 MR. RAMOS: There are a couple of hundred
27 different servers at the Data Center. Those are managed by a
28 number of different units within the Data Center.

1 So, the logs that we have would be for each
2 server.

3 Now, I thought I heard you say system logs.
4 We're not talking about the system logs at this point. That's a
5 different mechanism that we use as well. We're actually
6 doing --

7 SENATOR KARNETTE: The systems against the logs.
8 That's what we were talking about just now.

9 MR. RAMOS: There are two logs that we're dealing
10 with.

11 What we put in place right now is, we have a
12 separate paper log, for lack of a better word, right now.

13 SENATOR KARNETTE: Okay, you walk by, and you
14 check it out somehow, and you put your name down.

15 MR. RAMOS: Right, the person that's responsible
16 for maintaining that box has to sign off on that, when was the
17 last time they --

18 SENATOR KARNETTE: And if you find out, if
19 something happened, what would happen? This may sound
20 ridiculous, but I'm like Senator Johnson. I don't know exactly
21 how these things work.

22 How do you know that that particular system or
23 log is where the problem is?

24 MR. RAMOS: Well, the log is just a journal of
25 the actions taken on that system.

26 SENATOR KARNETTE: Right.

27 MR. RAMOS: If there's a problem with the system,
28 we have to go in and actually look at --

1 CHAIRMAN JOHNSON: Was there a log maintained
2 prior to this incident with the Controller's data?

3 MR. RAMOS: On this particular system, and on
4 this particular -- the staff person did not maintain a log on
5 this one.

6 CHAIRMAN JOHNSON: I've mentioned before that
7 Mrs. Johnson was damn unhappy to have to call around to
8 everybody we do business with, and so on, because we didn't know
9 what data precisely had been compromised and what the
10 implications of that compromising of data was. And, you know, a
11 couple hundred thousand state employees were in the same
12 situation, so I've got a very simple question.

13 Did anybody lose their job for this? Did someone
14 who was responsible for human error, which is apparently a
15 euphemism for simply not doing their job, and the supervisors
16 who were supposed to be looking over their shoulder, did any of
17 them lose their job?

18 Or are the same people there, unless they've gone
19 on, on their own, to some other employment?

20 Was anyone disciplined? Was anyone fired?

21 MR. RAMOS: The answer to that is yes.

22 CHAIRMAN JOHNSON: Someone was fired or
23 disciplined?

24 MR. RAMOS: Well, let me explain.

25 There's basically three individuals, I guess,
26 that I think are -- their actions needed to be reviewed.

27 In terms of the actual individual that was
28 maintaining the system, one of the things that we have to do is

1 to be able to go, get ahold of the system itself, and
2 maintain -- do an assessment as to when in fact the last patch
3 was applied to that.

4 The challenge with that has been that that system
5 was taken by the High Tech Crimes Task Force, and we have not
6 gotten it back yet. So, we have to wait for that part, for them
7 to finish their investigation, so we can come back and say,
8 "Okay, your records indicate you patched it, you know,
9 routinely. Now let's see what the system log itself says."

10 So, until that happens, we have no way --

11 CHAIRMAN JOHNSON: They have the originals, and
12 there are no backups of these logs? How are they maintained
13 physically? Is this a computer log?

14 MR. RAMOS: This is the actual computer itself
15 that was taken.

16 CHAIRMAN JOHNSON: So you don't have them?

17 MR. RAMOS: No, we don't have them. We had to
18 rebuild the system, so we used completely new hardware.

19 The other individuals involved was our
20 information security office, whose responsibility is to make
21 sure that the -- that the rules are followed, essentially. Our
22 information security officer actually resigned and has left
23 state service.

24 And then we have our executive level, our Deputy
25 Director, who is responsible for the whole information security
26 operation for the Data Center. And that person has been
27 terminated.

28 CHAIRMAN JOHNSON: Let's say I have one of those

1 positions now.

2 What have you done to make sure that the person
3 in that position knows what's going to happen if they don't do
4 these things?

5 MR. RAMOS: Well, what I've done is, I've sat
6 down with the person and very clearly laid out the things that
7 have to be in place and that have to happen.

8 CHAIRMAN JOHNSON: I understand that. You spoke
9 to that earlier.

10 The question is not, what are the things that you
11 want them to do.

12 The question is, what is their understanding of
13 the penalties that will follow their failure to do that?

14 MR. RAMOS: Well, I think when we have the
15 example of what's already happened with the first executive, and
16 then, as I mentioned, I laid out for them very --

17 CHAIRMAN JOHNSON: I mean, it's just a real
18 simple question. Have you said to them, "You don't do this, and
19 you're out on the street."

20 It's very simple; isn't it really?

21 MR. RAMOS: I've said the part about, "This is
22 what you need to do. This is what I'm going to hold you
23 accountable to."

24 I haven't told them --

25 CHAIRMAN JOHNSON: At least with me, the thrust
26 of these questions has to do with whether you keep your job.

27 MR. RAMOS: I understand.

28 CHAIRMAN JOHNSON: So, I'm making it very clear

1 that at least speaking for me, I want some real accountability
2 there.

3 Senator Karnette, I'm sorry I interrupted you.

4 SENATOR KARNETTE: Well, I'm concerned that it
5 doesn't happen again. I'm very concerned about that, and I know
6 you are, too, and I think we all are.

7 It's difficult. Technology, I know, is a subject
8 that all of us -- nobody is ever completely familiar with
9 technology. I understand that.

10 But we ultimately end up being the people who are
11 expected to make sure that these things don't happen. Then we
12 have to rely on staff.

13 I think people do have to be let go if it's too
14 tough for them. It's not that they don't try to do a good job,
15 it's just not the job for them. I think everybody wants to do a
16 good job. I have no question about that.

17 Do you foresee, there's going to be retirements,
18 and state's difficulties in recruiting and retaining
19 informational technology staff. I mean, I know most people
20 don't want to be hauled in front of all of us, and be expected
21 to answer all these questions, and understand them as well.

22 Do you think that there'll be any outsourcing?

23 MR. RAMOS: In the security area?

24 SENATOR KARNETTE: In any area.

25 MR. RAMOS: In information technology?

26 SENATOR KARNETTE: Well, in the areas that you
27 supervise, do you foresee any outsourcing?

28 MR. RAMOS: Well, I think there's going to have

1 to be. We do outsource some things now.

2 The area where I see the need to do some
3 outsourcing now is where you do have an incident, and you need
4 to bring in some in-depth expertise in investigative techniques
5 for information technology, forensics, those sorts of things.

6 Now, outsourcing could be to another
7 organization, like potentially the Department of Justice, or
8 Highway Patrol, or somebody who may have other expertise.

9 In this particular incident, we have had to go
10 out and bring in outside consultants, meaning nonstate service
11 people to help us with some of the investigation part of this.

12 In terms of just information technology in
13 general, there's certain aspects of information technology which
14 I think the state just isn't skilled at doing yet, and that's,
15 for example, the development of new applications. It's
16 difficult to retain staff with those skills working for the
17 state. Most of them go off into the private sector.

18 SENATOR KARNETTE: Now it should be a little
19 better, though, with Silicon Valley having sort of a down turn.

20 MR. RAMOS: And actually, it is a little bit of a
21 better time.

22 The challenge right now for the state, of course,
23 is we're under a hiring freeze. So, even that becomes very
24 difficult right now.

25 SENATOR KARNETTE: That's interesting, though.
26 If you let somebody go, can you replace them? Or you can't even
27 replace somebody?

28 MR. RAMOS: You have to go through and get a

1 specific exemption.

2 SENATOR KARNETTE: I'll bet in this area it could
3 be done, I would think.

4 MR. RAMOS: And in our information security
5 office, we are going through the exemption process to be able to
6 fill that vacancy as well.

7 CHAIRMAN JOHNSON: The gentleman who resigned has
8 not been replaced because of the hiring freeze?

9 MR. RAMOS: That's correct. We're going through
10 the -- there is a process by which you have to get an exemption
11 to do that. Unfortunately, right now it's my understanding that
12 no positions are exempt.

13 CHAIRMAN JOHNSON: One would think, in light of
14 the Executive Order of last fall, that that would be a high
15 priority of the Governor, to see that the people responsible for
16 maintaining the security of the data, that we would not leave
17 those positions unfilled.

18 Senator Knight.

19 SENATOR KNIGHT: Thank you, Mr. Chairman. I've
20 got two questions.

21 We have a maintenance log. We now know that we
22 have to update the various servers from time to time, and we
23 have that pretty well under control so that we do that.

24 I want to know, how do you know when one of those
25 servers has been breached? How do you know when the system has
26 been --

27 MR. RAMOS: The way that we know is a couple of
28 different ways. We have what's called intrusion detection

1 software. It's basically a monitoring tool that all of our
2 servers are now behind.

3 At the time that this happened on the
4 Controller's server, that system was not behind that tool.

5 So, that tool monitors on a regular and constant
6 basis any attacks or attempts to breach the system. We get
7 actually several hundred thousand attempts each month. Of
8 those, several thousand --

9 SENATOR KNIGHT: And that's all in real time?

10 MR. RAMOS: That's all in real time.

11 We also have a notification system so that if
12 something does affect the availability of a server, the people
13 responsible for maintaining and running that server get
14 notified. In fact, that's on a 24 by 7 basis.

15 SENATOR KNIGHT: How do they get notified? Is
16 there some centralized area where this information is displayed?

17 MR. RAMOS: Yes, we have an operations center.
18 Basically it's a big room with consoles with big screens that
19 monitor -- that display each and every server, that one will
20 show you if something happens. In addition, if it happens
21 during an off shift, and actually even if it's during the
22 regular working day, an e-mail notification goes out. Every one
23 of our folks carries one of these pagers that has a text
24 messaging capability which notifies them, something's wrong with
25 this server, or there's been an -- intrusion detection software
26 detected an attack against this server.

27 SENATOR KNIGHT: Secondly, have you implemented,
28 or do you plan to implement some kind of a red team, or a murder

1 board, or whatever, a group or two or three, however many
2 individuals it is, to try and breach your systems on a
3 continuous basis?

4 MR. RAMOS: I'm not sure what those terms --
5 somebody to come out and try and get in there.

6 SENATOR KNIGHT: Yeah.

7 MR. RAMOS: Yeah, we have --

8 SENATOR KNIGHT: Hire a hacker and say, "See what
9 you can do."

10 MR. RAMOS: Yes. We've already done that,
11 working with the CHP, where they actually hired somebody to come
12 in, and we caught them.

13 Then we're also right now have an RFP, a
14 procurement on the street to bring in some technical experts to
15 try and do that. My plan is to do that on a regular basis.

16 It's a budgetary issue, I will let you know.
17 Those things are expensive.

18 SENATOR KNIGHT: But that's a part of your plan?

19 MR. RAMOS: Yes. And we actually have already
20 done it once and have another request that I think in the next
21 month or so --

22 SENATOR KNIGHT: I would think that would be a
23 continuing effort.

24 MR. RAMOS: Yes, and it will be.

25 SENATOR KNIGHT: Thank you.

26 CHAIRMAN JOHNSON: Senator Romero.

27 SENATOR ROMERO: Thank you.

28 Senator Johnson has raised a number of concerns

1 that I think many of us share with respect to the breakdown, and
2 what this means for just the maintenance of security
3 information. The privacy issue is a real concern.

4 Let me ask you, though, you appeared before us
5 last April, late April. According to the Controller, this
6 break-in had occurred on April 4th or 5th.

7 When you came before the Committee, were you
8 aware already that this break-in had occurred?

9 MR. RAMOS: No. In fact, the Data Center itself
10 do not become aware of the issue until May 2nd, I believe. That
11 was when our technical person responsible for that server got
12 the first notice of it, or became aware of the issue.

13 If you like, I can talk about how that came
14 about.

15 SENATOR ROMERO: I guess maybe more of interest
16 to me is, what is being done now for us to be assured that if
17 there is a breakdown, and we hope that there won't be, but
18 should there be a breakdown, that you get very immediate
19 notification.

20 And I don't have a Mrs. Johnson, so I was one of
21 those persons having to call around and make notification. So,
22 I can relate to Mrs. Johnson.

23 CHAIRMAN JOHNSON: There are pluses to being a
24 married man.

25 [Laughter.]

26 MR. RAMOS: The reason that it took us a while to
27 find out about it is because that particular system was outside
28 of the security measure that I just mentioned to Senator Knight,

1 our intrusion detection software. That software, it's a system
2 that monitors all of our servers.

3 When we rebuilt the system for the Controller, we
4 moved it behind the firewall, which is the perimeter security
5 device, and then behind intrusion detection software. So, that
6 system is now monitored constantly.

7 So, should the same -- had that been behind the
8 intrusion detection software, we would have noticed that on
9 April 5th, as soon as it happened.

10 SENATOR ROMERO: Are there any other servers
11 outside the firewall?

12 MR. RAMOS: There are two other servers outside
13 the firewall. They're not system servers or application
14 servers.

15 One is what's called a domain name server. And
16 what that does is, it's basically like a traffic cop. When you
17 go in and log onto a website, you type in www.senate.ca.gov, and
18 you get to the Senate web page.

19 But in terms of the way that the computer that
20 runs that web page is identified, it doesn't actually identify
21 itself by that name. It identifies by what's called an IP
22 address, which is a series of numbers.

23 The domain name server, all that does is connect
24 incoming requests to log into -- or to access certain web
25 servers. But it takes the words and connects it to the IP
26 address. So, that's very commonly outside of firewalls because
27 of the sheer volume of hits that come against those.

28 We do have other security measures in place for

1 that server.

2 The second server that's outside is one that we
3 call our network news server. And what that does is, it goes
4 out and scrapes news items off the public internet and just
5 makes them available. So, there's no data, there's no
6 applications. They don't connect to anything else in terms of
7 any of our other production servers or systems.

8 And again, those are out there specifically
9 because of the volume of traffic that they get. Were you to put
10 them behind a firewall, it would basically overwhelm the
11 firewall. Again, millions of hits on those a day.

12 SENATOR ROMERO: Thank you.

13 CHAIRMAN JOHNSON: All right.

14 Any further questions from Committee Members?
15 Witnesses in support? Witnesses in opposition?

16 I would indicate to the Members of the Committee
17 that I continue to have very serious questions about this
18 break-in, the causes for the break-in, and remain at this point
19 unconvinced that sufficient steps have been taken to prevent it.

20 So, I'm going to recommend, in fairness to
21 Mr. Ramos, since Mr. Burton is not here, that we put this matter
22 over for a vote at a future hearing of the Committee.

23 And we may or may not ask that you reappear at
24 that time. Thank you very much, sir.

25 [Thereupon this portion of the
26 Senate Rules Committee hearing
27 was terminated at approximately.

28 5:15 P.M.]

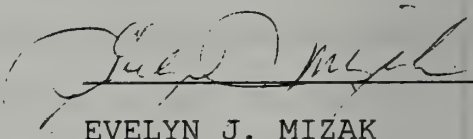
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SENATOR JOHN BURTON, Chair
SENATOR ROSS JOHNSON, Vice Chair
SENATOR BETTY KARNETTE
SENATOR WILLIAM KNIGHT
SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer
PAT WEBB, Committee Secretary
NETTIE SABELHAUS, Consultant on Governor's Appointments
SUSIE SWATT, Consultant to SENATOR JOHNSON
TIM SHELLEY, Consultant to SENATOR KARNETTE
CHRIS BURNS, Consultant to SENATOR KNIGHT
RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

CARLOS RAMOS, Director
Stephen P. Teale Data Center

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: File Item Three, Carlos Ramos, Director of the Teale Data Center.

Mr. Ramos was heard in Rules Committee when I was absent. Suddenly, Senator Johnson had some problems.

He wrote to Senator Johnson to clarify some issues because he felt he was not as articulate as he might have been.

The two individuals directly responsible for the breach no longer have their positions. The Information Security Officer resigned. The Deputy Director has been removed.

Senator Peace's Privacy Committee held hearings, and it's my understanding he believed that Mr. Ramos acted appropriately once he was informed of the breach, and he's taken the right steps to prevent future occurrence.

I'll move the nomination, but I'll call Senator Johnson.

SENATOR JOHNSON: I intend to vote no, and I'm sorry that Mr. Ramos isn't here for me -- oh, I'm glad that you are here, because I want to look you in the eye and tell you that, after having had the opportunity to question you in the Privacy Committee, and to question you again in the Rules Committee, I'm convinced that you have demonstrated a lack of understanding of the severity of the breach, that your responses have been inadequate, that, in effect, you're telling us that you're locking the barn door after the horse is out.

I'm very concerned about the potential for these

1 kinds of break-ins in the past. The prior break-in could have
2 been avoided by simply following standard industry practice.

3 Additionally, there was the Executive Order from
4 the Governor. And if an Executive Order from the Governor, in
5 the wake of the 9/11 incident, wouldn't lead to a complete audit
6 of all the systems, I don't know what the in the world would.

7 I just, therefore, believe that you've
8 demonstrated a lack of an understanding of the severity, the
9 potential impact that that breach had on hundreds of thousands
10 of state employees.

11 So again, I regret, but I must and will oppose
12 your confirmation.

13 CHAIRMAN BURTON: Any other comments from Members
14 of the Committee?

15 Move the nomination. Call the roll.

16 SECRETARY WEBB: Senator Karnette.

17 SENATOR KARNETTE: Aye.

18 SECRETARY WEBB: Karnette Aye. Senator Knight.
19 Senator Romero.

20 SENATOR ROMERO: Aye.

21 SECRETARY WEBB: Romero Aye. Senator Johnson.

22 SENATOR JOHNSON: No.

23 SECRETARY WEBB: Johnson No. Senator Burton.

24 CHAIRMAN BURTON: Aye.

25 SECRETARY WEBB: Burton Aye. Three to one.

26 CHAIRMAN BURTON: Congratulations, sir.

27 MR. RAMOS: Thank you.

28 [Thereupon this portion of the

1 Senate Rules Committee hearing
2 was terminated at approximately.
3 9:15 A.M.]

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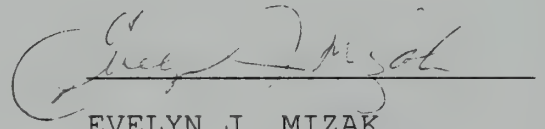
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